

**Environmental Assessment and
Regulatory Impact Review
for a Final Notice of a Fishing
Capacity Reduction Program in the
Pacific Coast Groundfish Fishery**

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Note: The various terms used in this document are defined in regulations governing Pacific Coast Groundfish fisheries and can be found at 50 CFR 600.10 and 50 CFR 660.302. A list of acronyms used in this document is available in the back of the document.

1.0 Introduction

The National Marine Fisheries Service (NMFS) has been directed by Congress to implement a fishing capacity reduction program for Pacific Coast Groundfish (PC groundfish) off the coasts of Washington, Oregon, and California (WOC). Congress has provided funding and guidance under the Consolidated Appropriations Resolution 2003 (Pub. L. 108-7) and Pub. L. 107-206. NMFS will implement this program pursuant to the applicable provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(b-e)) (see Appendix 1).

Provisions of NEPA require the agency to examine the impacts of the proposed action and its alternatives on the human environment. To do this, the agency generally prepares an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). NMFS has integrated a Regulatory Impact Review (RIR) into the EA to assess the economic impacts of the proposed action and its alternatives on industry. This EA/RIR analyzes the environmental, economic, and social effects of the proposed action and its alternatives. This integrated document provides information about the economic impacts of the proposed action and its alternatives by identifying those affected by the action, the nature and degree of the effects, and a discussion of the benefits and costs. It also serves to meet the applicable analytical requirements of other statutes and Executive Orders (E.O.), including E.O. 12866.

The purpose, need, and general background information are included in Section 1 of this document. Section 2 describes alternative actions that may be taken including the proposed action. In accordance with the National Environmental Policy Act (NEPA) requirements, Section 3 contains a description of the physical, biological, and socio-economic characteristics of the affected environment. Section 4 examines the physical, biological, and socio-economic impacts of the alternatives including the preferred alternative. The RIR analysis associated with E.O. 12866 is found in Section 5. Section 6 addresses the consistency of the proposed action with other regulatory considerations such as the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), Coastal Zone Management Act (CZMA), Paperwork Reduction Act (PRA), E.O. 13132, and E.O. 13175. A list of agencies contacted and a list of preparers is found in Section 7. Section 8 contains the NEPA conclusions and a Finding of No Significant Impact (FONSI). Section 9 provides a list of references and section 10 a list of acronyms used in this document.

1.1 Proposed Action

Pub. L. 108-7 directs the Secretary of Commerce (the Secretary) to publish a notice to implement the fishing capacity reduction program. The objective of the program is to achieve a permanent reduction of capacity in the PC groundfish fishery (reduction fishery) as a means to increase post-reduction harvesters' productivity, help financially stabilize the fishery, and help conserve and manage its fish. The PC groundfish fishing capacity reduction program (program) is designed to reduce the fishing capacity in the PC groundfish fishery by permanently reducing the number of PC groundfish limited entry trawl permits issued pursuant to the Pacific Coast Groundfish Fishery Management Plan (FMP) and to make the reduction vessels removed under

the program permanently ineligible to participate in any fishery worldwide. It is also designed to minimize spillover effects in the Coastal Dungeness crab and pink shrimp fisheries off WOC.

This program will be implemented under Pub. L. 108-7 and sections 312 (b-e) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). 50 CFR Part 600 Subpart L, which became effective June 18, 2000, contains the framework regulations for fishing capacity reduction programs. Section 312 and 50 CFR Part 600 Subpart L apply only if they are consistent with or not made inapplicable by the specific provisions of Pub. L. 108-7. Portions of Section 144(d)(3) of title 1, division B, of Pub. L. 106-554, which authorized capacity reduction in the Bering Sea/Aleutian Islands king and Tanner crab fisheries, also applies to the program. It specifically identifies sections of 50 CFR Part 600 applicable to the program.

1.2 Background

The Pacific groundfish fisheries are managed by NMFS, pursuant to provisions of the FMP in the Exclusive Economic Zone (EEZ) (3 to 200 miles off shore) off the WOC coast. The FMP was prepared by the Pacific Fishery Management Council (Council) under the authority of the Magnuson-Stevens Act. The FMP was approved by the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration (NOAA), on January 4, 1982 and became effective on September 30, 1982. In 1994, the FMP limited new entry into the fishery. The FMP also has provisions for working with the States concerning groundfish harvested in State waters.

The FMP establishes a range and type of management measures that may be used, enumerates objectives that measures must satisfy and describes more specific criteria for determining the level of harvest that will provide the greatest overall benefit to the Nation (optimum yield). Fisheries subject to management measures include limited entry trawl fisheries, limited entry fixed gear (pot and longline) fisheries, and a variety of other fisheries catching groundfish, either as target species or incidentally. Allocations to tribal fisheries in Washington State are also part of the FMP. To date, nine groundfish species have been declared overfished by the Secretary of Commerce and measures to prevent overfishing and rebuild these overfished stocks have been undertaken. Optimum yields (OYs) are established for groundfish species, species groups and geographic subunits. To prevent exceeding these OYs, management measures such as cumulative landing limits specific to species, species groups, and geographic subunits are implemented for limited entry trawl and fixed gear sectors, as well as for the "Open Access" fishery (a fishery where entry is not limited). In addition, area closures based on depth and that are intended to reduce bycatch of species apply to both commercial and recreational fisheries. These closures vary by geographic area and time of year.

Many PC groundfish stocks have been depleted to low levels of abundance and are not reproducing themselves quickly enough to support past levels of fishing harvest. This has been attributed to a number of factors, including poor understanding of basic stock productivity, overfishing and, to an unknown extent, poor ocean climate conditions over the last few decades. The 1996 amendments to the Magnuson-Stevens Act require the Council and NMFS to assess the health of the various stocks, and develop and implement rebuilding plans for those stocks

whose biomass has declined to a level where they are considered "overfished." Since 1996, nine PC groundfish stocks have been declared "overfished": bocaccio, yelloweye, canary, darkblotched and widow rockfish, cowcod, lingcod, Pacific ocean perch, and Pacific whiting. The Council has developed rebuilding plans for most of the overfished stocks, and rebuilding of some stocks, such as lingcod, appears to be working. Rebuilding other overfished rockfish stocks, however, is more difficult because of their long life spans, tendency to mature slowly, and sporadic recruitment success. Moreover, they are taken as unavoidable bycatch in many fishing strategies targeting healthy stocks of groundfish, and in other fisheries such as shrimp, halibut and salmon.

Total revenues from the groundfish fishery have fallen by 40 to 50 percent over the last few years. In January 2000, NMFS declared a "disaster" in the PC groundfish fishery and is working with the three coastal states to distribute funds appropriated by Congress to assist fishers and fishing communities, as well as increase the amount of cooperative research done using fishing vessels that might otherwise be in financial distress. Many stocks and their harvest levels are at historic lows. In 2003, the Council and NMFS implemented the most restrictive set of regulations in the history of the fishery. The underlying goal of the 2003 regulations is to protect and rebuild overfished stocks while trying to maximize fishing opportunities for healthy stocks. To accomplish this goal, bottom fishing on most of the Continental Shelf from Canada to Mexico is banned.

Over the course of a year, catcher vessel owners and captains employ a variety of strategies. Some fishers from the northern ports fish in waters off of Alaska, as well as in the West Coast groundfish fishery. Others may change their operations throughout the year, targeting salmon, shrimp, crab, or albacore, in addition to various high-value groundfish species, in order to spend more time in waters close to their communities. Factory trawlers and motherships fishing for or processing Pacific whiting off of the West Coast usually also participate in the Alaska pollock seasons, allowing the vessels and crews to spend a greater percentage of the year at work on the ocean. Commercial fisheries landings for species other than groundfish vary along the length of the coast. Coastal Dungeness crab landings are particularly high in Washington state; squid, anchovies, and other coastal pelagics figure heavily in California commercial landings; salmon, shrimp, and highly migratory species like albacore are more widely distributed, and vary from year to year. The majority of trawl vessels are between 50 and 80 feet.

1.3 Purpose and Need for Action

Under the Magnuson-Stevens Act, the Secretary may conduct a fishery capacity reduction program if, among other things, the Secretary finds that the program "is necessary to prevent or end overfishing, rebuild stocks, or achieve measurable and significant improvements in the conservation and management of the fishery." Reducing capacity has been a major desire by both the industry and the Council with the Council stating in its Strategic Plan that reducing capacity is its highest priority.

From 1982 until now, the Council has amended the FMP in many ways and many times to restrict capacity induced pressure on the fishery and the management system. Limited Entry

area closures, minimum mesh sizes, trip duration limits and trip catch allocations have all been tried. While trip allocation limits have achieved a leveling off of production, they have led to serious economic problems for the groundfish fleet. Recently, the regulations underlying the FMP were amended to close large areas of the Continental shelf to fishing activities. This amendment was designed to reduce the likelihood of fishermen intercepting stressed/overfished species.

From a narrow perspective, the purpose and need for action is to implement a fishing capacity reduction program according to Congressional intent. From a broad perspective, the purpose and need for action is to reduce capacity in one of the major groundfish trawl fleets and help the Council achieve the conservation and economic objectives of the FMP.

2.0 Description of Alternatives

Five alternatives have been considered: (1) the Status Quo; (2) Statutorily Mandated Reduction Program; (3) Statutorily Mandated Reduction Program with Fee Collection Cooperation by States; (4) Statutorily Mandated Reduction Program with Mandatory Vessel Scrapping; and (5) Reduction Program for Other Groundfish Gear Types.

2.1 Status Quo (Alternative 1)

Under this alternative there will be no trawl buyback program undertaken for the fishery. The PC groundfish fishery will remain overcapitalized. Although there are too many vessels competing to catch a substantially decreased number of fish, fishermen remain in the fishery since there is no other means to recover their significant capital investment. Overcapitalization reduces the effectiveness of current management measures such as landing limits and seasons, in reducing bycatch, and in ensuring that OYs are not exceeded. Overcapitalization has diminished the economic viability of the fleets and dependent communities. Without a reduction in the fleet, the fishery will likely continue to be managed by low landing limits and short seasons. As a consequence of these low landing limits and short seasons, groundfish vessels have increased effort in related fisheries such as non-Federally managed Dungeness crab and pink shrimp. This alternative does not meet the legal mandates discussed under Alternative 2.

2.2 Statutorily Mandated Reduction Program (Alternative 2 - Proposed Action)

Under this alternative a fishing capacity reduction program will be implemented. The objective of the program is to achieve a permanent reduction of capacity in the reduction fishery as a means to increase post-reduction harvesters' productivity, help financially stabilize the fishery, and help conserve and manage its fish. The program is designed to reduce the fishing capacity in the PC groundfish fishery by permanently reducing the number of PC groundfish limited entry trawl permits that were issued pursuant to the FMP. The bidder irrevocably offers to relinquish its Federal fishing permit(s), as well as all of its coastal Dungeness crab permit(s) and pink shrimp permit(s) issued by the States of Washington, Oregon, or California and registered to the reduction vessel; offers to permanently remove its reduction vessel from fishing by either scrapping or allowing the placement of title restrictions; and offers to relinquish any other of the bidder's right, entitlement, fishery permit, fishery license, area and species endorsement, and any other fishery privilege or harvest authorization, if any, derived, in whole or in part, from either the use or ownership of its Reduction Vessel.

The program will be financed through a 30-year reduction loan made under sections 1111 and 1112 of Title XI of the Merchant Marine Act of 1936. According to a formula specified by Congress, groundfish, pink shrimp, and Coastal Dungeness crab landings will be assessed a fee to repay the loan. Current assessments indicate that the industry can afford to repay a \$36 million loan. This loan is made possible via Section 212 of Pub. L. 107-206 which provided a \$500,000 appropriation to fund the Federal Credit Reform Act cost of a reduction loan which will partially finance the program's cost. Pub. L 108-7 provided a \$10 million appropriation to

directly fund the program. Therefore, the total amount of funds potentially available for the program is about \$46 million.

This program seeks to obtain the maximum sustained reduction in fishing capacity at the least cost, by giving limited entry trawl groundfish permit and vessel owners the opportunity to relinquish their PC groundfish permits for a price they specify. This program establishes a bidding procedure that assigns a bid score to each bid by dividing the bid price for each reduction permit by the average annual total ex-vessel dollar value of each vessel's landings of PC groundfish, coastal Dungeness crab, and pink shrimp landed by the bidder's reduction vessel that corresponds to the bidder's fee-share reduction permits. NMFS will average the three highest total annual revenues from groundfish, coastal Dungeness crab, and pink shrimp during 1998, 1999, 2000, or 2001. The coastal Dungeness crab and pink shrimp fisheries (fee-share fisheries) are managed separately by Washington, Oregon, and California.

Annual revenues will be determined using information reported on state fish tickets. Vessel revenues will be allocated into six fee-share fisheries (e.g. Washington coastal Dungeness crab, Washington pink shrimp, Oregon coastal Dungeness crab, Oregon pink shrimp, California coastal Dungeness crab, and California pink shrimp) included in such reduction permit by their respective total pounds landed. This program uses a reverse auction in which the lowest bid score ranks first, followed by each bid with the next lowest bid score, until there are no more bids or accepting the next lowest bid would cause the total bid amount of accepted bids to exceed the maximum reduction cost. If any two or more bid scores are exactly the same and there is not sufficient reduction funding to accept both, NMFS will accept the bid that removes the greatest amount of capacity, or in the event more than one such bid removes the same amount of capacity, the bid it received first.

Each bidder must offer to relinquish all of his or her Federal permits and any state permits for pink shrimp or coastal Dungeness crab. Additionally, each person submitting a bid must offer to relinquish the reduction vessel's legal authority to participate in any fishery, by offering to permanently:

- (a) Allow imposition of title restrictions that remove the reduction vessel's fisheries endorsement,
- (b) Relinquish eligibility for any present or future U.S. Government approval under section (9)(c)(2) of the Shipping Act, 1916 (46 U.S.C. App. 808(c)(2)) for placement of the reduction vessel under foreign registry or operation under the authority of a foreign country, and
- (c) Relinquish any other present or future reduction vessel fishing privilege or fishery eligibility claim of any kind, including any based on the reduction vessel's catch history.

If a reduction vessel is registered only under state jurisdiction (i.e., it is not Federally documented), it must be scrapped.

To participate in the program, the statute requires that persons hold a Federal limited entry fishing permit endorsed for the operation of trawl gear. Vessels harvesting and processing whiting in the catcher-processor sector are excluded from the program. A bid can include participation by third parties who own and/or hold reduction components as co-bidders. The program will be implemented by the following steps described below.

An initial notice and request for public comments was published in the Federal Register on May 28, 2003. The comment period ended on June 27, 2003.

The final notice, including final draft invitation to bid and bidding documents, summarizes and responds to comments from nine entities which resulted in the following revisions:

- (1) The term co-bidder has been added to include third parties who own and/or hold reduction components and will participate in the bidding with the qualifying bidder;
- (2) Bid-scoring includes the average landings values of only those fee-share fisheries that match the bidder's fee-share reduction permits included in the bid;
- (3) For identical bid scores where there is not sufficient reduction funding to accept both, NMFS will accept the bid that removes the greatest amount of capacity without exceeding funding limits or if both bids remove identical amounts of capacity, the first received;
- (4) Notification of accepted bidders will occur after the referendum;
- (5) Accepted bidders must have stopped fishing and must have retrieved all fishing gear previously deployed from the reduction vessel 30 days after the publication of the reduction payment tender notice in the Federal Register; and
- (6) The term "coastal" has been added to clarify the Dungeness crab eligible for this program. This term is intended to encompass California, Oregon, and Washington state's description of Dungeness crab fisheries and permit systems outside of Puget Sound.

Based on 2002 data, 33 of the 37 groundfish trawl permits in the state of Washington reported landings. Of these, seven reported Dungeness crab landings and one reported landings of 2,200 pounds in Puget Sound. Please see section 3.7 for a discussion of the Dungeness crab fisheries.

NMFS will mail each permit owner of a PC Groundfish permit advance notice that NMFS will be mailing them an invitation to bid, bidding document and all other bidding information.

Following the advance notice, NMFS will mail each qualified bidder an invitation to bid, bid form, and all other bidding information. The invitation to bid will establish all bidding requirements, state the entire terms and conditions to which each bid, and NMFS acceptance of any bid, are contractually subject.

Concurrently, NMFS will mail each eligible voter, other than the qualified bidders, a notification that NMFS has invited bids and will mail each eligible voter a referendum ballot after the NMFS has scored, tallied, accepted or rejected bids.

After the bid submission deadline, NMFS will analyze the bids and determine which bids it will accept. NMFS will notify those bidders whose bids are accepted, by U.S. mail, that a binding reduction contract forms upon NMFS acceptance. Payment of any reduction payment is subject to the condition that the industry fee system necessary to repay the reduction loan is subsequently approved by post-bidding referendum.

NMFS will conduct a post-bidding referendum to determine whether eligible voters authorize an industry fee system. The referendum is deemed successful if a simple majority of the referendum ballots received are cast in favor of the industry fee system. NMFS will mail, by U.S. certified mail, return receipt requested, a ballot and voting instructions to each eligible voter. The ballot will contain a 5-digit number assigned to each voter, a summary of the referendum's purpose, a place for the voter to vote for or against the industry fee system, a place for the vessel owner's signature, and will specify the date NMFS must receive the ballot. A postage paid, addressed envelope will also be enclosed to return the ballot to NMFS.

Each person who is the permit owner of a PC groundfish permit and each person who is the holder of a fee-share permit will be entitled to one vote for each such permit. NMFS will mail each person a separate referendum ballot for each permit.

NMFS will tally all responsive votes based on PC groundfish and all responsive votes based on fee-share permits in each of the six fisheries. NMFS will then multiply each vote tally by a fraction equaling the reduction or fee-share fisheries proportional share of the reduction loan. The product will be for each of the seven fisheries, the vote tally weighted in proportion to the fishery's reduction loan sub-amount. Then NMFS will notify, by U.S. mail, all eligible voters of: the number of potential voters; the number of actual voters; the number of qualified returned ballots; the number of votes for and the number of votes against the industry fee system; and whether the referendum was successful. The referendum is deemed successful if the weighted total of votes approving the referendum are greater than those disapproving.

If the referendum is successful, NMFS will mail to each bidder a bid acceptance or rejection notice and will remind accepted bidders that they must perform in accordance with their reduction contracts. If the referendum is unsuccessful, NMFS will mail each eligible voter a notice about the referendum's outcome. NMFS' mailing of the bid acceptance notice creates binding and irrevocable reduction contracts.

A reduction payment tender notice is published in the Federal Register which notifies the bidder that NMFS intends to pay the bidder and needs payment instructions. Within thirty days after publication in the Federal Register of the reduction payment tender notice, the bidder must have stopped fishing and must retrieve all fishing gear previously deployed from the reduction vessel.

Reduction loan repayment fees will be structured so that a reduction loan sub-amount is established for the reduction fishery and for each of the six fee-share fisheries. Each reduction loan sub-amount is determined by dividing each allocation value by the total allocation value, the result states each allocation value as a percentage of total allocation value. NMFS will then multiply the reduction loan amount by each of the results to express the reduction loan sub-amount for each. Fish sellers who participate in the reduction fishery and each fee-share fishery will repay the reduction loan sub-amount attributable to that fishery.

The fee, which will be established by a separate rulemaking, may not exceed 5 percent of the delivery value. The initial fee rate would be the fee revenue necessary to amortize the reduction loan, projecting the annual delivery value, and expressing that revenue as a percentage of value. NMFS will annually recalculate the fee rate required to ensure reduction loan repayment. The repayment period for the reduction loan will be 30 years.

Under the existing framework regulations, the fee is due and payable at the time of fish delivery. Each fish buyer shall collect the fee at the time of delivery by deducting the fee from delivery value before paying the net delivery value. Each fish seller shall pay the fee at the time of fish delivery by receiving from the buyer the net delivery value. Although, the Secretary may enter into agreements with WOC to collect these fees; until that happens, NMFS will use the provisions of the framework regulations. NMFS will publish a Federal Register notice at least 30 days before the effective date of any fee or any fee rate change.

NMFS will also send notification, by U.S. mail, to each affected fish seller and buyer. Late charges of 1.5 percent per month for the total amount of the fee not paid, collected, deposited, and/or disbursed would be assessed. NMFS may take appropriate action against each fish seller and/or buyer responsible for non-payment, non-collection, non-deposit, and/or non-disbursement.

Each fish buyer required to collect a fee must maintain a separate account at a Federally insured financial institution for the sole purpose of depositing collected fee revenue and disbursing it to NMFS. No less frequently than at the end of each business week, each fish buyer shall deposit all fee revenue collected through a date not more than two days before the deposit date. On the last business day of the month, the fish buyer must disburse to NMFS the full amount of deposit principal then in the account, along with a settlement sheet.

When the reduction loan is repaid, NMFS would publish a Federal Register notice that the fee is no longer in effect and send notification by U.S. mail to each affected fish seller and buyer.

2.3 Statutorily Mandated Reduction Program with Fee Collection Cooperation by States (Alternative 3)

The statute presents the option to coordinate loan repayment with the states of Washington, Oregon and California rather than collecting fees to repay the loan under the terms and conditions of the framework regulation, as discussed in Section 2.2 above. Each state either has

passed a bill or currently has a bill before its legislature which will enable them to assist in collecting the fees.

2.4 Statutorily Mandated Reduction Program with Mandatory Vessel Scrapping (Alternative 4)

This alternative would require vessel scrapping to ensure that buyback vessels cannot participate in any Federal, state, high seas, or foreign fishery. Under Alternative 2, only state-registered vessels will be required to be scrapped. Federally registered vessels would permanently relinquish a Federally documented reduction vessel's worldwide fishing privileges. Under Alternative 2, whether the vessel was scrapped would be dependent on the vessel owner. Vessel owners could find some potential non-fishing uses for their vessels.

Under this alternative, vessel owners would not have such an option. However, the authorizing statute allows for retention of the reduction vessel as long as the fishery endorsement is cancelled. This affords more capacity removal from the targeted fisheries at less cost.

2.5 Reduction Program for Other Groundfish Gear Types (Alternative 5)

Under this alternative, gear types other than the limited entry trawlers included in Alternative 2 would be eligible for the program. These include longline, pot/trap gear, and those in the open access fishery which has unrestricted participation and is comprised of vessels targeting or incidentally catching groundfish with a variety of gears, excluding groundfish trawl gear.

3.0 Affected Environment

3.1 PC Groundfish Fishery Management

The PC groundfish fishery is a year-round, multi-species fishery that takes place off the coasts of WOC. The PC groundfish FMP manages over 80 species which are divided by type as follows: roundfish, flatfish, rockfish, sharks, skates, ratfish, morids, and grenadiers. These species, occur throughout the EEZ and occupy diverse habitats at all stages in their life history. Information on the interactions between the various groundfish species and between groundfish and non-groundfish species varies in completeness. While a few species have been intensely studied, there is relatively little information on most groundfish species.

Each fishing year, the Council uses the best available stock assessment data to evaluate the biological condition of the PC groundfish fishery and to develop estimates of acceptable biological catches (ABC) for major groundfish stocks. The ABCs are biologically based estimates of the amount of fish that may be harvested from the fishery each year without jeopardizing the resource. The ABC may be modified to incorporate biological safety factors and risk assessment due to uncertainty. OYs are established each year for the species or species groups under Council management. Numerical OYs are not set for every stock, especially where harvest has been less than ABC.

The Magnuson-Stevens Act requires an FMP to prevent overfishing. Overfishing is defined in the National Standards Guidelines as exceeding the fishing mortality rate needed to produce maximum sustainable yield on a continuing basis. The OY harvest levels are set at levels that are expected to prevent overfishing, equal to or less than the ABCs. The term “overfished” describes a stock whose abundance is below the minimum stock size required to produce maximum sustainable yield on a continuing basis--the overfished/rebuilding threshold. Overfished/rebuilding thresholds are generally linked to the same productivity assumptions that determine the ABC levels. Nine groundfish species are below the overfished threshold in 2002: bocaccio, canary rockfish, cowcod (south of Point Conception,) darkblotched rockfish, lingcod, Pacific whiting, Pacific ocean perch, widow rockfish, and yelloweye rockfish.

3.2 Limited Entry Groundfish Fisheries

Most of the Pacific Coast non-tribal, commercial groundfish harvest is taken by the limited entry fleet. The groundfish limited entry program was established in 1994 for trawl, longline, and trap (or pot) gears with Amendment 6 to the FMP; a license limitation program intended to restrict vessel participation in the directed commercial groundfish fisheries off WOC. The limited entry permits that were created through that program specify the gear type that a permitted vessel may use to participate in the limited entry fishery, and the vessel length associated with the permit.

A vessel may only participate in the fishery with the gear designated on its permit(s) and may only be registered to a permit appropriate to the vessel's length. Since 1994, the Council has created further license restrictions for the limited entry fixed gear (longline and fish pot gear)

fleet that restrict the number of permits useable in the primary sablefish fishery (Amendment 9) and that allow up to three sablefish-endorsed permits to be used per vessel (Amendment 14).

As of early May, 2003, there were 498 limited entry permits with the following endorsements: trawl only, longline only, pot gear only or dual endorsed permits (able to fish two gears). Of these 498 permits, there are 268 trawl only endorsed permits and 5 dual endorsed permits involving trawl and some other gear for a total of 273 trawl endorsed permits. Thirteen of these permits are in “unclassified” status—permits that are owned but are not currently attached to a specific vessel. Ten of the 273 trawl endorsed permits are associated with the whiting catcher processor fleet with nine attached to a catcher processor and one permit that is in unidentified status.

As indicated above, not all permits are registered to a vessel. In addition, not all permits that are registered to a vessel are fished. For example, during 2001, 424 vessels were registered to Pacific Coast groundfish limited entry permits, of these 257 were trawl vessels, 140 were longline vessels, 11 were trap vessels, and 16 vessels that were capable of using a combination of gears. Of the 424 vessels that were registered to limited entry permits in 2001, only 386 actually landed groundfish, this included 233 trawl vessels, 129 longline vessels and 24 pot vessels.

Limited Entry Vessels by Gear, 2001

| | Gear group | Number of Limited Entry Vessels |
|--|--------------------------------------|--|
| Vessels registered to limited entry permits | Trawl (including catcher processors) | 257 |
| | Longline | 140 |
| | Pot | 11 |
| | Combined gears | 16 |
| | TOTAL | 424 |
| Vessels registered to limited entry permits that landed groundfish, including at-sea whiting, in 2001 | Trawl (including catcher processors) | 233 |
| | Longline | 129 |
| | Pot | 24 |
| | TOTAL | 386 |

Source: (NMFS NCR Permits Database 10/02)

Because limited entry permits may be sold and leased by their owners, the distribution of permits between the three states often shifts. In 2002, roughly 23 percent of the limited entry permits were assigned to vessels making landings in California, 39 percent to vessels making landings in

Oregon, and 37 percent to vessels making landings in Washington. In 1999, this division of permits was approximately 41 percent for California, 37 percent for Oregon, and 21 percent for Washington. This change in state distribution of limited entry permits may also be due to the implementation of the fixed-gear permit stacking program. Vessels operating from northern ports may have purchased or leased sablefish-endorsed permits from vessels that had been operating out of California ports.

Limited entry fishers focus their efforts on many different species, with the largest landings by volume (other than Pacific whiting) being from the following species: Dover sole, arrowroot flounder, patial sole, sablefish, thornyheads, and yellowtail rockfish. There are 55+ rockfish species managed by the Pacific Coast groundfish FMP, of which seven species have been declared overfished in the past four years. Protective fisheries regulations intended to reduce the directed and incidental catch of overfished rockfish and other depleted species have significantly reduced the harvest of rockfish in recent years.

Trawlers take the vast majority of the groundfish harvest by weight and by value. In 2001, groundfish trawlers landed 97% of total groundfish harvest by weight and 75% by value. Trawling is much more dominant to the north of Cape Mendocino than south. (Cape Mendocino is located off Northern California near Eureka.) While non-trawl vessels took only 2% of the coast-wide groundfish harvest by weight, their harvest accounted for about 25% of the exvessel value due to the prevalence of relatively high value sablefish in this fishery.

By weight, Pacific whiting represents the vast majority of West Coast groundfish landings. The whiting mid-water trawl fishery is distinct from the trawl groundfish trip limit fisheries. In 2001, whiting accounted for about 85 percent, by weight, of all commercial shore-based groundfish landings. Whiting is taken by treaty tribe catcher vessels delivering to a mothership (17.5% of total OY in 2002,) by non-tribal catcher vessels delivering to shore-based processing plants (42% of non-tribal OY,) by non-tribal catcher-vessels delivering to motherships (24% of non-tribal OY,) and by non-tribal catcher-processor vessels (34% of the non-tribal OY.) In 2001, 29 catcher vessels delivered whiting to shore-based processing plants. This number is down from previous years, when the number of participating vessels was in the mid- to upper-30s. (Some vessels move between the West Coast and Alaska fisheries; some remain entirely off WOC.) In 2001, the vast majority of whiting (about 73%) was landed in Oregon; Washington landings represented 24% of the total and California landings represented about 3.1%. Approximately 20 catcher vessels delivered to five motherships in 2001, and seven catcher-processor vessels participated in the whiting fishery. Also in 2001, four tribal catcher vessels delivered whiting to one mothership.

PC groundfish compete in a global market, not only with similar species produced in other regions of the world, but also with other fish species such as salmon and tuna. In addition, fish compete with other sources of protein in consumers' budgets. More than 4.7 million metric tons (mt) of fish and other seafood were landed in the U.S. in 2000, approximately the same amount landed in each of the prior two years. PC groundfish accounted for about 0.12 million mt of this total. Pacific whiting, a relatively abundant but low value species, comprises about two thirds of PC groundfish landings by weight, but only around 10% of groundfish ex-vessel revenue.

Groundfish has historically provided West Coast commercial harvesters with a relatively steady source of income over the year, supplementing income earned from other fisheries. Although groundfish contributed only about 17% of total annual ex-vessel revenue during 2000, groundfish played a more significant role during different times of the year, providing one-fifth to one-third of ex-vessel revenue coast wide during April and also each of the summer months. For northern parts of the coast, groundfish is particularly important just before the start of the December crab fishery.

3.3 Limited Entry Trawl Endorsed Vessels

The program involves Federally permitted vessels that are endorsed for trawling that either deliver to shore or to non-tribal motherships (reduction fleet). Although they are endorsed for trawling, catcher-processor vessels are specifically excluded from this program. Tribal groundfish harvest vessels are not Federally permitted. Bidding and reduction loan formulas also involve ex-vessel values for groundfish, coastal Dungeness crab, and pink shrimp. The discussion below, is based on three sets of data: The Federal Groundfish Permit Database managed by the NMFS Northwest Region's Federal Permits Office, Pacific whiting data developed by NMFS Sustainable Fisheries Division using a combination of observer and vessel logbook data, and state fish ticket data organized by Pacific States Marine Fisheries Commission in its PacFIN Database.

The Federal Groundfish Permit Database was used to identify trawl vessels in the PacFIN database. Annual landings and ex-vessel revenue summaries by vessel were developed. The annual summary for a vessel includes all landings that vessel reported in that year, even if the vessel only fished part of the year under a trawl endorsed limited entry permit. In some instances, although trawl endorsed for groundfish, some vessels did not harvest groundfish. These vessels were still included in the data set because of the statutorily defined bidding system which mandates a bidding procedure that assigns a bid score to each bid by dividing the price bid for each reduction permit by average annual total ex-vessel dollar value of landings of PC groundfish, coastal Dungeness crab, and pink shrimp based on the 3 highest total annual revenues landed during 1998, 1999, 2000, or 2001. For at-sea whiting deliveries, total catch was adjusted by industry averages to reflect retained catch. Shorebased whiting ex-vessel prices were used to estimate the at-sea whiting revenue. (All ex-vessel values are nominal values; they are not adjusted to reflect inflation.)

Over the period 1994 to 2002, ex-vessel revenues by the shorebased component of the reduction fleet have been mirroring the decline in the stocks, falling from \$65 million in 1994 to \$31 million in 2002. (See Tables below.) When shrimp and crab revenues are included, total shorebased fleet revenues of groundfish, crab, and shrimp have fallen by almost 50% since 1994 to a level of \$47 million in 2002. The addition of whiting revenues brings the total reduction fleet revenues to \$50 million in 2002. For 2002, reduction and fee-share fisheries species revenues represent 96 percent of the value of all the species landed by reduction fleet.

Over the period 1994 to 2002, the number of trawl endorsed vessels that deliver to shore have declined from 334 vessels in 1994 to 227 vessels in 2002. The number of vessels delivering to

non-tribal motherships also declined from 44 vessels to 11 vessels during the same period. After accounting for vessels that deliver to shorebased plants and to motherships, the total reduction fleet, has fallen from 348 vessels in 1994 to 233 vessels in 2002.

Total trawl reduction fleet landings of groundfish, pink shrimp, and coastal Dungeness crab have fallen over the 1994 to 2002 period from 173,000 tons to 88,000 tons. Although groundfish landings have declined steadily, including a sharp decline over the 1999-2002 period, pink shrimp landings were at peak levels in 2002. The amount of retained whiting by the non-tribal mothership fleet has seen a sharp reduction in the last two years because of declines in Pacific whiting biomass. The major species harvested by the shorebased component of the reduction fleet are rockfish, flatfish, whiting, and sablefish, with whiting being the largest component in terms of weight. Rockfish trends reflect declines in key "overfished species" while flatfish trends reflect restrictions put in place in order to protect rockfish species. In terms of revenues, rockfish during the 1990's were the largest source of groundfish revenues, but since 2000, flatfish is now the largest source of groundfish revenues for the shorebased limited entry trawl fleet.

Reviewing the projections made in the "Emergency Rule Implementing Proposed Groundfish Acceptable Biological Catch and Optimum Yield Specifications and Management Measures in January and February 2002" (Pacific Fishery Management Council November 2002) and Table 4.3.4.3 of "Environmental Assessment/Regulatory Impact Review/Regulatory Flexibility Analysis for a Program to Monitor Time-Area Closures in the Pacific Coast Groundfish Fishery" suggests that projected fleet revenues from groundfish for 2003 may range from \$36 to \$43 million. (Estimates were adjusted to exclude catcher-processor vessels)

Based on 2002 ex-vessel revenues of \$50 million, it has been projected that over a 30 year period, the industry can afford to repay a \$36 million loan. This is based on certain assumptions that have been made for analytical purposes. First, a 30-year period has been used for reduction loan repayment since this is the minimum loan period specified by law. The interest rate of 6.76 percent reflects the U.S. Treasury's cost of borrowing equivalent maturity funds as of March 7, 2003, plus 2 percent. NMFS will determine the loan's initial interest rate when it borrows from the U.S. Treasury the funds with which to disburse reduction payments. The initial interest rate will change to a final interest rate at the end of the fiscal year in which NMFS borrowed the funds from the U.S. Treasury. The final interest rate will be the two percent plus a weighted average, throughout that fiscal year, of the U.S. Treasury's cost of borrowing equivalent maturity funds. The final interest rate will be fixed and will not vary over the rest of the loan's 30 year term.

All of these vessels appear to be Coast Guard Documented, none show as being state registered.

Ex-Vessel Revenue Trends by Trawl Endorsed Vessels That Deliver to Shore or to Non-Tribal Motherships
(Catcher-Processor Revenues are Excluded)

| | Shorebased Groundfish Revenues | Shorebased Shrimp Revenues | Shorebased Crab Revenues | Shorebased Total Buyback Revenues | Non-Tribal Whiting Revenues | Total Buyback Revenues | All Species Shorebased Revenues | All Species Buyback Revenues | Percent Buyback Species |
|------|--------------------------------------|----------------------------------|--------------------------------|---|-----------------------------------|------------------------------|---------------------------------------|------------------------------------|-------------------------------|
| 1994 | 65 | 14 | 11 | 90 | 6 | 96 | 94 | 100 | 96% |
| 1995 | 75 | 7 | 8 | 90 | 4 | 94 | 92 | 96 | 98% |
| 1996 | 62 | 7 | 10 | 79 | 3 | 82 | 80 | 83 | 99% |
| 1997 | 60 | 6 | 6 | 72 | 5 | 77 | 76 | 81 | 95% |
| 1998 | 43 | 2 | 7 | 52 | 3 | 55 | 55 | 58 | 95% |
| 1999 | 42 | 5 | 9 | 56 | 4 | 60 | 58 | 62 | 97% |
| 2000 | 44 | 5 | 8 | 57 | 4 | 61 | 60 | 64 | 95% |
| 2001 | 36 | 3 | 6 | 45 | 3 | 48 | 48 | 51 | 94% |
| 2002 | 31 | 8 | 8 | 47 | 3 | 50 | 49 | 52 | 96% |

Fleet Trends--Numbers of Trawl Endorsed Vessels That Deliver to Shore or to Non-Tribal Motherships
(Catcher-Processor Revenues are Excluded)

| | Shorebased Landings Total | Shorebased Permits Groundfish Harvest >0 | Shorebased Permits Groundfish Harvest=0 | Non-Tribal At-Sea Whiting | Non-Tribal At-Sea Whiting Deliver to Shore | Non-Tribal At-Sea Only Whiting Deliver At-Sea Only | Total Reduction Fleet |
|------|---------------------------------|---|--|---------------------------------|---|---|-----------------------------|
| 1994 | 334 | 311 | 23 | 44 | 30 | 14 | 348 |
| 1995 | 280 | 271 | 9 | 35 | 20 | 15 | 295 |
| 1996 | 273 | 266 | 7 | 28 | 15 | 13 | 286 |
| 1997 | 262 | 255 | 7 | 27 | 15 | 12 | 274 |
| 1998 | 253 | 244 | 9 | 25 | 13 | 12 | 265 |
| 1999 | 253 | 246 | 7 | 23 | 14 | 9 | 262 |
| 2000 | 246 | 238 | 8 | 23 | 16 | 7 | 253 |
| 2001 | 233 | 219 | 14 | 21 | 8 | 13 | 246 |
| 2002 | 227 | 213 | 14 | 11 | 5 | 6 | 233 |

Landings and Harvests by Trawl Endorsed Vessels
(Catcher Processors Excluded)

| Tons | Shorebased Groundfish All | Shorebased Pink Shrimp | Shorebased Dungeness Crab | Shorebased Total | At-Sea Retained Whiting |
|------|---------------------------------|------------------------------|---------------------------------|---------------------|-------------------------------|
| 1994 | 158,614 | 10,577 | 3,863 | 173,054 | 92,475 |
| 1995 | 144,566 | 4,163 | 2,204 | 150,934 | 41,029 |
| 1996 | 135,004 | 5,186 | 3,291 | 143,481 | 46,998 |
| 1997 | 146,864 | 6,861 | 1,661 | 155,386 | 49,460 |
| 1998 | 142,987 | 1,600 | 1,865 | 146,452 | 49,705 |
| 1999 | 126,849 | 4,968 | 2,137 | 133,954 | 47,580 |
| 2000 | 120,070 | 6,207 | 1,831 | 128,109 | 46,710 |
| 2001 | 100,340 | 5,751 | 1,345 | 107,436 | 35,658 |
| 2002 | 73,646 | 12,396 | 2,245 | 88,286 | 26,106 |

| Tons | Shorebased Groundfish All | Shorebased Groundfish Rockfish | Shorebased Groundfish Flatfish | Shorebased Groundfish Whiting | Shorebased Groundfish Sablefish |
|------|---------------------------------|--------------------------------------|--------------------------------------|-------------------------------------|---------------------------------------|
| 1994 | 158,614 | 34,033 | 21,445 | 92,316 | 5,176 |
| 1995 | 144,566 | 29,802 | 21,000 | 85,132 | 4,572 |
| 1996 | 135,004 | 25,500 | 20,240 | 80,190 | 4,607 |
| 1997 | 146,864 | 23,468 | 19,379 | 94,292 | 4,089 |
| 1998 | 142,987 | 18,749 | 16,541 | 102,161 | 2,396 |
| 1999 | 126,849 | 12,400 | 19,339 | 88,832 | 3,358 |
| 2000 | 120,070 | 10,582 | 16,890 | 87,097 | 2,893 |
| 2001 | 100,340 | 7,088 | 14,412 | 73,413 | 2,731 |
| 2002 | 73,646 | 5,082 | 13,751 | 47,017 | 1,763 |

Ex-Vessel Revenues by Trawl Endorsed Vessels
(Catcher Processors Excluded)

| Million \$ | Shorebased Groundfish All | Shorebased Pink Shrimp | Shorebased Dungeness Crab | Shorebased Total | At-Sea Retained Whiting | Total Shorebase &At-Sea |
|------------|---------------------------------|------------------------------|---------------------------------|---------------------|-------------------------------|-------------------------------|
| 1994 | 65 | 14 | 11 | 90 | 6 | 96 |
| 1995 | 75 | 7 | 8 | 90 | 4 | 94 |
| 1996 | 62 | 7 | 10 | 78 | 3 | 81 |
| 1997 | 60 | 6 | 6 | 72 | 5 | 77 |
| 1998 | 43 | 2 | 7 | 52 | 3 | 55 |
| 1999 | 42 | 5 | 9 | 56 | 4 | 60 |
| 2000 | 44 | 5 | 8 | 58 | 4 | 63 |
| 2001 | 36 | 3 | 6 | 46 | 3 | 48 |
| 2002 | 31 | 8 | 8 | 47 | 3 | 50 |

| Million \$ | Shorebased Groundfish All | Shorebased Groundfish Rockfish | Shorebased Groundfish Flatfish | Shorebased Groundfish Whiting | Shorebased Groundfish Sablefish |
|------------|---------------------------------|--------------------------------------|--------------------------------------|-------------------------------------|---------------------------------------|
| 1994 | 65 | 33 | 14 | 6 | 8 |
| 1995 | 75 | 35 | 17 | 9 | 12 |
| 1996 | 62 | 26 | 16 | 5 | 12 |
| 1997 | 60 | 22 | 15 | 9 | 11 |
| 1998 | 43 | 17 | 13 | 6 | 6 |
| 1999 | 42 | 13 | 13 | 7 | 7 |
| 2000 | 44 | 13 | 14 | 8 | 8 |
| 2001 | 36 | 9 | 13 | 6 | 7 |
| 2002 | 31 | 8 | 12 | 5 | 4 |

Capacity utilization in the fleet is quite low. The Council's Scientific and Statistical Committee (SSC) drafted a report entitled "Overcapitalization in the West Coast Groundfish Fishery: Background, Issues and Solutions". (Hereinafter referred to as SSC Report). In the SSC Report, estimates were made of the minimum number of vessels needed to harvest the 2000 OY's. The minimum number of limited entry trawl vessels needed to harvest the associated shoreside groundfish trawl OY's including whiting was estimated to be between 70 and 107 vessels for a capacity utilization rate (minimum number of vessels divided by the number of trawl endorsed permits) that ranges between 27% and 41%. Since 2000, shoreside trawl harvests have fallen by 40%, suggesting that the minimum number of vessels needed to harvest the 2002 OY's is on the order of 42 to 64 vessels. During 2002, an estimated 233 vessels landed groundfish (see Tables above). Excluding the catcher-processor permits, there are 263 trawl permits. Therefore, using the SSC's methodology, the estimated capacity utilization rate for 2002 is on the order of 16% to 24%.

3.4 Open Access Groundfish Fisheries

Unlike the limited entry sector, the open access fishery has unrestricted participation and is comprised of vessels targeting or incidentally catching groundfish with a variety of gears, excluding groundfish trawl gear. While the open access groundfish fishery is under Federal management and does not have participation restrictions, some state and Federally managed fisheries that land groundfish in the open access fishery have implemented their own limited entry fisheries or enacted management provisions that have affected participation in groundfish fisheries.

The commercial open access groundfish fishery consists of vessels that do not necessarily depend on revenue from the fishery as a major source of income. Many vessels that predominately fish for other species inadvertently catch and land groundfish. Or, in times and areas when fisheries for other species are not profitable, some vessels will transition into the groundfish open access fishery for short periods. The commercial open access fishery for groundfish is split between vessels targeting groundfish (directed fishery) and vessels targeting other species (incidental fishery).

Landings, revenue, and participation by state fisheries are generally distributed along the coast in patterns governed by factors such as location of target species, location of ports with supporting marine supplies and services, and restrictions/regulations of various state and federal governments. For the open access directed groundfish fishery, the majority of landings by weight that target groundfish occur off California. Oregon's directed groundfish open access fishery has the next highest landings, followed by Washington's. In the incidental groundfish fisheries, Oregon and California both have similar landings in their open access fisheries. Washington again has the lowest landings by weight of incidental groundfish. Participation in both directed and bycatch components of the open access fishery is much greater in California than in Oregon and Washington combined.

Compared to the limited entry trawl fleet, the open access fleet is quite large but its harvests and revenues are small. During the period 1995 to 1998, about 3,500 vessels participated in the open

access fishery. For the year 2000, the number of vessels associated with the open access fleet is estimated to be about 1,400. (Estimates for 2001 are unavailable.) For 2001, the directed open access landings were approximately 3,291 mt and incidental landings were 197 mt. The associated open access fleet revenue was less than \$6 million.

3.5 Recreational Fishery

The recreational or sport fishery has been part of the culture and economy of West Coast fishing communities for more than 50 years. Most recreational anglers use hook and line gear that is held directly in the hand or is attached to a pole or rod that is held in the hand. Recreational fishing occurs along the entire coast. Anglers fish from man-made structures such as piers, jetties, docks; natural shore areas; privately owned or rental boats; and charter vessels.

Licenses for the individual sport anglers are issued by the states of Washington, Oregon and California, with each state having its own specific requirements. Sport fishing licences are issued to residents and non-residents and may vary in cost by the level of participation (i.e.: 1-day, 2-day, annual), fishery, and fishing location. In addition, there may be a few special days each year where anyone can fish without a fishing license. In California, anyone 16 years and older must have a fishing license to take any kind of marine fish, except for persons angling from a public pier in ocean or bay waters. In Oregon, anyone 14 years or older is required to have a general angling license to fish for or land marine fish except when fishing for smelt or when they are a resident landowner or member of their immediate family and are angling on land they own and reside upon. In Washington, a saltwater license is required for anyone who is 16 years or older and allows the license holder to fish for any species existing in saltwater, including salmon, steelhead, sturgeon, halibut, rockfish, etc.

Similarly, the states register and issue licenses for recreational boats owned and operated by state residents. The registration requirements and fees vary between the states and are based on type and size of vessel. In California, every sail-powered vessel over 8 feet in length (except wind surfing boards) and every motor driven boat not registered by the U. S. Coast Guard that is used in California state waters is subject to registration. In Oregon, the Oregon State Marine Board is responsible for registering and titling all recreational boating vessels. Registration and title fees and marine fuel taxes support boating facilities, marine law enforcement and boating safety education. All motorized boats, regardless of length or type, must be registered and sailboats 12 feet or longer must also be registered in Oregon. In Washington state, motorized vessels and any vessel that is 16 feet or longer must be registered with the state.

Marine recreational fishing on the West Coast has been on an increasing trend since 1996. Most angling occurs during the summer months with fewer anglers fishing northward during the winter. In addition to the leisure benefits that recreational anglers receive from participating in marine fisheries, they generate monetary benefits in the form of sales, income, and employment throughout the Pacific Coast region. A wide variety of goods and services are purchased by anglers from sporting goods stores, speciality stores, bait and tackle shops, guide services, marinas, grocery stores, automobile service stations, and restaurants. The economic impacts of

these purchases occur throughout the PC economy and provide income and jobs in manufacturing, transportation industries, and service sectors.

3.6 Processing Sector

The PC groundfish catch is processed in shore-based processing plants along the Pacific coast with the exception of the portion of Pacific whiting catch that is processed at sea. By weight, 1998 commercial groundfish landings were distributed among the three states as follows: Washington, 13%; Oregon, 69%; California, 18%. By value, commercial groundfish landings are distributed among the three states as follows: Washington, 15%; Oregon, 43%; California, 41%. The discrepancies between the Oregon and California portions of the landings are expected because Oregon processors handle a relatively high percent of the shore-based whiting landings, a high volume, low value fishery. Conversely, California fishers land more of the low volume, high value species as a proportion of the total state-wide catch than Oregon fishers.

Several thousand entities have permits to buy fish on the West Coast. Of these 1,780 purchased fish caught in the ocean area and landed on Washington, Oregon, or California state fish tickets in the year 2000 (excluding tribal catch) and 732 purchased groundfish. Larger buyers tend to handle groundfish more than smaller buyers. Of the 546 buyers purchasing in excess of \$20,000 of West Coast landings, 59% bought groundfish. These 546 buyers bought 99% of all Council managed groundfish. Of the 1,234 buyers purchasing less than \$20,000 from West Coast vessels, 33% bought groundfish. The number of buyers handling groundfish from trawl vessels is substantially lower than all of those handling groundfish. Only 17% (125) of all groundfish buyers (732) handled fish from trawl vessels. These 125 buyers comprise only 7% of all buyers (1,780). Buyers of trawl caught groundfish are important to nontrawl vessels as well, handling 60% (by value) of the groundfish caught by nontrawl vessels. This discussion is based on Table 3.3.4.9 of the EA/RIR/RFA for a Program to Monitor Time-Area Closures in the Pacific Groundfish Fishery (January 2003 Draft). This table displays the number of buyers compared to the groundfish buyers, grouped by total expenditures for the year 2000 (excluding at-sea whiting).

The largest buyers tend to handle trawl vessels more than smaller buyers. Of the 38 largest buyers of groundfish (those with purchases in excess of \$1 million), 73% (28) bought from trawl vessels. Seventy-eight percent of all groundfish purchases from trawl vessels go to the 28 trawl buyers with total purchases of all species in excess of \$1 million. These 28 buyers also handle 39% of the exvessel value of the nontrawl purchases.

Mid-size buyers tend to have greater importance for nontrawl vessels than for trawl vessels. Fifty percent of all nontrawl sales go to buyers with total purchases of between \$20 thousand and \$1 million, as compared to 22% for trawl vessels. Absent cost and exprocessor sale price data, very rough assumptions must be made to consider possible levels of dependence of processors on groundfish. However, it is assumed here that gross exvessel value of purchases is a rough indicator of relative levels of dependence. Large buyers of groundfish tend to have a lesser percentage of their overall purchases from groundfish than smaller buyers.

There are two classes of vessels in the at-sea processing sector of the whiting fishery, catcher-processors that harvest and process their own catch, and mothership vessels that process unsorted catch received from smaller catcher vessels. The processing vessels are large (>250 ft in length) and carry crews of 65-200, who mostly work in shifts to keep the factories operating day and night.

Vessels that did not initially qualify for a license limitation program permit had to buy or lease one from qualifying vessels to gain access to the fishery. To harvest whiting, all at-sea catcher-processors had to purchase or lease permits. This changed the composition of the at-sea processing fleet considerably, increasing the number of motherships, because permits are not required for vessels that only process. Unlike catcher-processors and catcher vessels, motherships do not have permits to harvest groundfish in the WOC.

In 2001, 20 catcher vessels delivered whiting to 5 non-tribal mothership processors and 4 tribal catcher vessels delivered whiting to a single tribal mothership. Some vessels may deliver catch exclusively to motherships off Alaska and the West Coast, but in recent years, about half of the non-tribal vessels also delivered whiting to shore-based processing facilities in WOC. Similarly, the tribal mothership also processes whiting in the non-tribal sector before the start of the tribal fishery. In 2001, 7 catcher-processors participated in the whiting fishery. These catcher-processors are not eligible to participate in the program.

Since May 1997, when the Department of Justice approved allocation of whiting shares among the members of the Whiting Conservation Cooperative, the catcher-processor fishery has operated as a voluntary quota share program where each of the catcher-processor companies has agreed to take a specific share of the harvest. With harvests assured, the catcher-processors are able to operate more cautiously to avoid areas of salmon and rockfish abundance. The motherships, however, operate under more competitive conditions (first come first served) for their sector's allocation. The U.S. whiting allocation has been fully utilized by domestic processors since 1992.

Whiting is a high volume species, but it commands a relatively low price per pound. The at-sea processing vessels have onboard surimi production capacity and were initially designed to fish for pollock in the groundfish fisheries off Alaska. Because whiting is a similar species to pollock, harvesting and processing technology and equipment used in the Alaskan fisheries is also used for whiting. In addition, to surimi, most of these vessels have the capacity to produce frozen fillet blocks and have fish meal plants to process small whiting and incidentally caught groundfish species.

3.7 Dungeness Crab

Dungeness crab (*Cancer magister*) is distributed from the Aleutian Islands, Alaska, to Monterey Bay, California. They live in bays, inlets, around estuaries, and on the continental shelf. Dungeness crab are found to a depth of about 180 m. Although it is found at times on mud and gravel, this crab is most abundant on sand bottoms; frequently it occurs among eelgrass. The

Dungeness crab, which are typically harvested using traps (crab pots), ring nets, by hand (scuba divers) or dip nets, are incidentally taken or harmed unintentionally by groundfish gears.

The coastal Dungeness crab fishery is divided between treaty sectors, covering catches by Indian tribes, and a non-treaty sector. The crab fishery is managed by the states of WOC with inter-state coordination through the Pacific States Marine Fisheries Commission. This fishery is managed on the basis of simple “3-S” principles: sex, season, and size. Only male crabs may be retained in the commercial fishery (thus protecting the reproductive potential of the populations), the fishery has open and closed seasons, and a minimum size limit is imposed on commercial landings of male crabs.

In Washington, the coastal Dungeness crab fishery is managed under a limited entry system with two tiers of pot limits and a December 1 through September 15 season. The season also begins on December 1 in Oregon. In California, distinct fisheries occur in Northern and Central California, with the northern fishery covering a larger area. California implemented a limited entry program in 1995 although effort continues to increase with the entry of larger multipurpose vessels from other fisheries. Landings have not declined, but this effort increase has resulted in a race for fish with more than 80% of total landings made during the month of December.

The Washington Department of Fish and Wildlife issues two types of commercial Dungeness crab licenses for two very distinct and different geographic areas of the state, Puget Sound and the Washington Coast; both license types are governed by limited entry statutes. They are fairly distinctive fleets with only a few individuals that hold both license types. The Puget Sound fleet is primarily comprised of small vessels that are not suitable for the coastal Dungeness crab fishery.

The program provides for the relinquishment of coastal Dungeness crab licenses that are held by participants in the program. This feature was added to the program to address the concerns raised by the coastal crab fleet that individuals who held both a federal groundfish trawl permit and a coastal Dungeness crab license would invest the capital from the sale of the groundfish permit into the crab fishery thereby exacerbating the overcapitalization of the crab fishery. The large groundfish trawl vessels were readily capable of participating in the crab fishery and the threat of this occurring was a valid concern.

No known discussions to include Puget Sound Dungeness crab licenses as one of the state licenses that would be required to be relinquished nor was any concern expressed by the Puget Sound Dungeness crab fleet relative to buyback capital being invested in their fishery. In addition, the state limits Puget Sound license holders from using more than 100 pots. Moreover, the large groundfish trawl vessels are not well suited to this inside water fishery and the fishery typically produces much smaller quantities of commercially harvested crab than the coastal fishery.

3.8 Pacific Pink Shrimp

Pacific pink shrimp (*Pandalus jordani*) are found from Unalaska in the Aleutian Islands to San Diego, California, at depths of 25 to 200 fm (46 to 366 m). Off the U.S. West Coast these shrimp are harvested with trawl gear from northern Washington to central California between 60 and 100 fm (110 to 180 m). The majority of the catch is taken off the coast of Oregon. Concentrations of pink shrimp are associated with well-defined areas of green mud and muddy-sand bottom. Shrimp trawl nets are usually constructed with net mesh sizes smaller than the net mesh sizes for legal groundfish trawl gear. Thus, it is shrimp trawlers that commonly take groundfish in association with shrimp, rather than the reverse.

The pink shrimp fishery is also managed by the states of WOC. In 1981, the three states established uniform coast-wide regulations for the pink shrimp fishery. The season runs from April 1 through October 31. Pink shrimp may be taken for commercial purposes only by trawl nets or pots. Most of the pink shrimp catch is taken with trawl gear with a minimum mesh size. Many vessels that participate in the shrimp trawl fishery also have Federal groundfish limited entry permits. When participating in the pink shrimp fishery, they must abide by the same rules as vessels that do not have limited entry permits.

3.9 State Management Issues

The major state fisheries affected by the program are the coastal Dungeness crab and Pink shrimp fisheries. In terms of permits, there are about 1,700 permits issued for these fisheries.

| | Coastal Dungeness crab | Pink Shrimp |
|------------|---------------------------|-------------|
| Washington | 230 | 108 |
| Oregon | 445 | 186 |
| California | 633 | 131 |
| Total | 1,308 | 425 |

Each state has imposed limited entry on these fisheries. In some instances there are legal requirements to maintain permits at a certain level. For example, the Oregon shrimp fishery has a requirement that if the number of active permits (renewed in a particular year) falls below 150, a lottery is to be held to return the number of issued permits to 150. For crab there is no such requirement. In the State of Washington, House Bill 1887 has passed the state House of Representatives and is currently in the state Senate. Current statutory language provides the Director of the Washington Department of Fish and Wildlife the flexibility to maintain a minimum of 175 coastal Dungeness crab licenses.

The program involves removing the ability for trawl vessels to fish in either state or federal waters. Trawling is largely prohibited in state waters. Washington coastal state waters (0-3 miles) are closed to commercial hook and line and trawl fishing. There is some limited commercial fishing in certain parts of northern Puget Sound and the Strait of Juan de Fuca. Other portions of Puget Sound are closed to commercial fishing. In Oregon, there are state waters are not "officially closed" to trawling but there is a gentleman's agreement between trawlers and the state that no trawling will occur inshore except for in historic flatfish trawl grounds. In California 100% of State waters out to 2 miles is closed and 99% of state water out to 3 miles is closed. Trawlers can enter the California Halibut fishery which is managed by area closure and seasons. However, conversations with State officials indicate that if there were a rapid increase in effort, steps would be taken to further limit effort in the fishery.

4.0 Environmental Consequences

Provisions of NEPA require the agency to examine the impacts of the proposed action (Alternative 2) and its alternatives on the human environment. Accordingly the EA discusses this action and its alternatives by examining the factors contained in Section 6.01 of NOAA Administrative Order 216-6 and the environmental provisions of the MMPA and the ESA. If the action is determined not to have a significant impact on the human environment based on an analysis of relevant considerations, the EA and any resulting FONSI would be sufficient to meet NEPA requirements.

4.1 Alternative 1 Impacts

Although drafted in 2000, the SSC Report's description of the environmental consequences of maintaining the status quo remains appropriate today:

“The status quo pertains not only to the current state of the fishery under the current management regime but also what will likely occur if the current regime is continued indefinitely into the future. Given current OYs, the status quo will likely result in more complex and costly management and enforcement. In order to prevent further declines in cumulative landing limits, pressures will increase to terminate year-round fishing opportunities for all vessels... As vessels are no longer given the opportunity to fish groundfish the entire year, participation in other fisheries can be expected to increase, with a consequent worsening of the spillover effect. Financial difficulties within the industry will cause allocation disputes to intensify, reduce safety as operators attempt to cut corners by postponing maintenance and make it difficult for the industry to contribute to observer programs and other activities that are intended to improve management.”

“These problems will not be resolved by waiting for vessels to leave the fishery. Rebuilding currently overfished stocks will take several decades. Fewer non-groundfish options are available due to limited entry in other fisheries. Most groundfish permit holders will be willing to pay the nominal groundfish permit renewal fee (regardless of whether they intend to fish for groundfish in the current year) in order to retain the option to fish in future years. Permit holders who are not interested in retaining the groundfish option will likely find buyers willing to speculate on the possibility that fishing conditions will improve over the long term or on the possibility that a government will provide grants and disaster relief. Some vessels will file for bankruptcy; however, most of these boats will simply be returned to the fishery at lower capital values. Given that vessels are much more likely to hold or transfer their permits than allow them to lapse, a significant amount of latent capacity will remain in the groundfish fishery. Thus, even, if OYs were to increase, there is no reason to expect an improvement in a cumulative landings limits or seasons, since the significant latent capacity already in the fishery can be mobilized and keep landing limits low and seasons short. The problems now being experienced in the groundfish fishery will not disappear without a significant reduction in capacity.”

The SSC evaluated the potential effects of alternative capacity reduction approaches relative to the status quo. Below is a table adapted from the SSC's Table IV-1 (Information on Permit stacking, and IFQs was deleted as such information is not germane to this project.) "Immediate Feasibility" refers to whether funds and/or legal issues could be overcome. "Groundfish Capacity Reduction" refers to the ability to significantly reduce capacity. The SSC favored permit-only buyout programs in reducing capacity in the groundfish fishery. The SSC argues, that for a given amount of funds, more permits could be purchased as opposed to a program that involves permits and vessels. In comparing government funded buyout programs to industry funded buyout programs, the SSC stated:

“Given that industry will fund a buyout only if it expects it to result in a profitable fishery, an industry buyout--if affordable --can also result in significant capacity reduction. Government funded buyouts , which are typically intended as a source of short term financial relief, can--given sufficient political will -- be designed to achieve some capacity reduction. However, given the difficulty of fully dampening the speculative increase in permit prices that typically accompanies government programs, a government buyout will be less successful at reducing groundfish capacity than a similarly funded industry buyout. A government buyout designed to retire vessels will have a smaller impact on groundfish capacity than a similarly funded government buyout that retires groundfish permits only, since the monetary incentive needed to induce a vessel to retire from all fisheries will be greater than the monetary incentive to induce retirement of the vessel's groundfish permit.”

| Criteria | SSC Reviewed Options | | | |
|---|----------------------|--|---|---|
| | Status Quo | Government Buyout with Vessel Retirement | Government Buyout Groundfish Permits Only | Industry Buyout Groundfish Permits Only |
| Immediate Feasibility | YES | Maybe | Maybe | Maybe |
| Groundfish Capacity Reduction | NONE | Some | More | Most |
| Long Term Groundfish Capacity Management | NONE | Some | Some | Some |
| Economic Efficiency and Profitability | LOW | Somewhat higher | Higher | Higher |
| Groundfish Discards | HIGH | Somewhat lower | Lower | Lower |
| Groundfish Management Costs | HIGH | Somewhat lower | Lower | Lower |
| Groundfish Monitoring and Enforcement Costs | HIGH | Somewhat lower | Lower | Lower |
| Spillover Effects | SOME | Lower | Same as Status Quo | Same as Status Quo |

Groundfish fishery efficiency and profitability is directly correlated with the amount of capacity reduction while the level of discards, groundfish management costs, and groundfish monitoring costs are inversely correlated with the amount of capacity reduction. With respect to spillover effects, the SSC stated:

“The low cumulative landings limits and other regulatory restrictions that characterize the status quo provide an incentive for existing groundfish permit holders to seek alternative opportunities in non-groundfish fisheries. Limited entry, voluntary or mandatory permit stacking and government or industry funded buyout of groundfish

permits all have the potential to exclude some groundfish participants, who will subsequently become fully committed to non-groundfish fisheries. Conversely, however, those who remain in the fishery may be more likely to specialize in groundfish and less likely to diversify into other fisheries. Given the difficulty of predicting the spillover effects associated with these approaches relative to the status quo, they are all considered to be indistinguishable for purposes of the table. Government funded vessel retirement will result in less spillover than any other approaches, since it removes vessels from other fisheries as well as from groundfish.”

4.2 Alternative 2 Impacts

The proposed program, Alternative 2, is a hybrid of an industry and government funded buyback program. Based on the SSC’s criteria, Alternative 2 is superior to the status quo. In statutorily requiring that vessels be purchased along with permits, Congress appears to have indicated that the "Spillover Effects" are important and worth the sacrifice in potential groundfish capacity reduction relative to a program that just purchased groundfish permits.

The biological environment would be minimally impacted since the OYs would not be affected by this program. There may be a reduction in groundfish discards based on the hypothesis that a reduction in groundfish vessels leads to higher groundfish trip limits and few situations where discarding occurs to keep within those limits. Although there would likely be fewer vessels harvesting the catch, each would probably be spending more time at sea, therefore it would be hard to gauge the reduction of impacts on the physical environment.

Fish processors should not see any reduction in product, but they will see a reduction in the number of vessels that can provide it to them. However, they also will potentially benefit from increased opportunities for year round fishing. If capacity is significantly reduced, fishing seasons may lengthen and become more predictable with fewer notices of emergency closures. Processors would have access to fewer fishermen and vessels but will benefit from being able to process greater amounts of fish should the program help foster the rebuilding of fish stocks. Processors would also incur incremental increases to their current administrative costs for collecting state landings fees; but some portion of such costs will also be passed on to the harvest sector through adjustments in the ex-vessel prices paid to fishermen. Ex-vessel prices will be affected as the number of fishermen participating will be reduced and because ex-vessel prices will now reflect the administrative costs incurred by the processors, the fees paid by the fishermen, and any changes to the profits remaining fishermen earn as a result of having less competition with other fishermen. Compared to the status quo, total harvest and revenue will not decrease and may increase. Fish processors will in some form assist in the collection of the fees associated with the repayment of the loan. To the extent that the fee collection system builds on existing state systems, this burden will be minimized.

Vessel crew members will see a loss in job opportunities. They are currently seeing job opportunities decline as a result of the Groundfish Disaster. Crew generally work a few months per year at most, supplementing their income with other activities. Although some positions may be eliminated as a result of this program, others may be created since the remaining vessels

may need additional help to catch the additional available fish. Although there may be a loss in the number of fishing positions, those remaining in the fishery may receive higher wages and income as average revenues per vessel are expected to increase. As a potential mitigative measure for those crew members who become unemployed, there are existing state and federal programs that they can participate in. For example, in response to the Groundfish Disaster declaration in January, 2000, the three states received Federal funds to help fishermen. In Oregon and California, there are ongoing programs, where crew members can be retrained to enter other occupations.

As reduction in groundfish capacity will aid groundfish fishermen, groundfish managers, and the resources, the reduction in capacity in the shrimp and crab fisheries should have similar effects. However, these effects may not be fully realizable if the states reissue state permits that have been purchased under this program.

Under this alternative, only state-registered vessels will be required to be scrapped. Federally registered vessels would permanently relinquish a Federally documented reduction vessel's worldwide fishing privileges as directed by the authorizing statute. This affords more capacity removal from the targeted fisheries at less cost.

The decision to scrap a Federally registered vessel would be the vessel owner's discretion. NMFS' estimates that most vessels will not be scrapped because vessel owners could find potential non-fishing uses for their vessels. Some examples are scientific research vessels, whale-watching cruises, or yacht conversions. However for vessel owners who do not have alternative uses for their vessels, they will either have to pay the necessary fees to keep the vessel safe at the dock or scrap the vessel. If it is assumed that there are few alternative uses for vessels, most bidders will probably base their bids on what they estimate it would cost to scrap the vessel after all useful gear or parts are sold.

Moreover, those vessel owners participating in the program are likely to be in a weakened financial condition. Bankrupt vessel owners may not have the financial means to properly scrap their vessels which could lead to the abandonment of vessels. Abandoned vessels, left at the dock may cause environmental hazards such as those from oil leakage. Existing state laws and enforcement measures should be sufficient to minimize abandonment. Required scrapping of vessels is not authorized by statute but if permitted would also have potential environmental ramifications such as disposal concerns.

4.2.1 Long Term Impacts on Groundfish Capacity

One of the predominant issues associated with buyback programs concerns "capital stuffing". According to the SSC Report, "Capital stuffing pertains to the technological innovations and fishing practices that allow fishermen to increase their share of the allowable harvest in the race for fish. As these innovations and practices become more widespread, the competitive advantage they initially provided tends to dissipate, leading to additional rounds of innovation and higher costs for the fleet as a whole without a commensurate increase in harvest." Under Section 312 (b) of the Magnuson Act, the Secretary may conduct a fishing capacity program if

the Secretary determines that the program, among other things, "will prevent the replacement of fishing capacity removed by the program through a moratorium on new entrants, restrictions on vessel upgrades, and other effort control measures, taking into account the full potential capacity of the fleet."

In implementing Amendment 6 to the FMP, NMFS and the Council did address the potential for "capital stuffing" and did take into account the "full potential capacity of the fleet", especially with respect to the Pacific groundfish trawl fleet. Amendment 6 established license limitation in the commercial groundfish fisheries. Among other things, it established the current size endorsements on trawl permits and provisions by which permits could be combined for vessels that wanted to enter the fishery or for owners who wanted to lengthen their vessels. A permit can only be used for a vessel that is no more than 5 ft longer than the endorsed size on the permit or for a small vessel. Vessel owners may fish with larger vessels by combining permits for smaller vessels. However, to lengthen a vessel or to bring a new vessel into the fishery is not solely a function of purchasing permits with the appropriate lengths, but one of summing up the appropriate capacity amounts associated with such permits. Amendment 6 stated that: "A schedule or formula will be developed by NMFS with the intent that any combination of permits should not result in an increase in the capacity of the fleet." On April, 14, 1994 NMFS published a Federal Register notice that established a "capacity rating point" system that is based on the relationship between harvest capacity (harvest per unit of time) and vessel length so that "Once the relationship between length and harvesting capacity is established, a table can be generated that assigns a certain number of capacity rating points for each increment of vessel length." Such a table can be used by vessel owners to determine, at a glance, how many rating points are needed for any particular length of vessel (59 FR 17727, April 14, 1994). For example, a 200-foot (61.0 m) vessel would require twelve 60-foot (18.3 m) permits and a 400-foot (121.9) vessel would require twenty 60-foot (18.3 m) permits. In simpler terms according to the SSC Report: "Amendment 6 discourages increases in capacity associated with the transfer of permits from smaller to larger boats, non-permitted vessels desiring to enter the fishery are required to either purchase a permit from a similar-sized or larger vessel or to purchase a combination of permits from smaller vessels according to a conversion formula based on vessel length (SSC Report p. 32)."

When Amendment 6 was implemented, 629 limited entry permits were issued, with 389 of these permits endorsed for trawl gear with five of these permits also endorsed to fish another gear. As catcher-processors did not qualify as initial permit holders, they had to purchase permits according to the rules described above. As a result, 99 permits were purchased and combined to support a fleet of 10 catcher processors. Such purchases are the major reason that the number of trawl endorsements declined from 384 in 1994 to current levels of 273 in 2003.

In establishing estimates of capacity, NMFS and the Council considered other alternative measures that might be used to constrain capacity:

"The Council considered many alternatives which might be used to constrain capacity. The program as designed constrains investment in increasing fleet capacity through controls on the number of vessels, gear used, with vessel, length of the vessel, and trip

limits...Horsepower was considered as a possible control but rejected because of the ease with which horsepower could be increased by the temporary installation of special equipment on the engine. Various measures of volume were considered both alone and in conjunction with length but were rejected. Volume in conjunction with length was rejected because it might constrain flexibility as vessels attempted to meet safety requirements. Volume alone was rejected because it is difficult to measure, the measure is sometimes subject to much judgement, and analysis did not show that it performed significantly better than length as an indicator of capacity. Length is a simple measure which is relatively easy to use determine. It is not expected to halt any growth in capacity but will place an upward limit on it. "Square" vessels are not expected because of the lack of incentive for vessels operating under trip limits... Council members heard testimony that at the present time there is significant economic incentive for trawl vessels to decrease their size and that this economic incentive would overcome any disincentive created by the permanent reduction in the size endorsement on the permit." (Amendment 6 p. 4-79).

The current management climate does not directly provide incentives for "capital stuffing." Trip limits and OYs have been shrinking. Trip limits are the same for all size trawl vessels, reducing the incentive to upgrade. Most of the of the West Coast EEZ is now closed to trawl fishing and this closure is expected to remain in some form for a number of years. Gear restrictions, size limits, and other management measures are making it much more complex to fish.

According to the SSC Report, a major source of capital stuffing is technological change:

"Improvements in technology increase the harvest capacity of individual vessels by enhancing the ability of fishermen to generate more catch. The rate of technological advance in electronics and fishing gear, estimated at 1% to 5% annually (Gates et al. 1996), can significantly undermine the effectiveness of permit reduction programs in reducing excess capacity over the long term. For example, given a 2.5% rate of technological change, a 25% reduction in capacity could be absorbed (i.e. remaining capacity can harvest 25% more fish) in less than ten years." (SSC Report, p. 97)

Although, it does not appear that the Council considered the contribution of electronics to harvest capacity in developing Amendment 6, putting a limit on electronics would be difficult to enforce, and may be counter productive with respect to safety issues and helping fishermen to identify the depths and areas that they need to avoid to prevent overfishing.

In implementing Amendment 6, it can be argued that the Council and NMFS has taken all practical steps to limit vessel upgrading/capital stuffing in the groundfish trawl fleet. There is a limited entry system in place which limits the number of participants. The vessel length restrictions provide disincentives to vessel upgrades. Effort is limited through the establishment of OYs, trip limits, and other management measures such as gear restrictions and area closures.

Whether these practical steps are sufficient will depend on time and the ability of the Council to implement IFQs. According to the SSC Report (page 102):

“Participants in derby fisheries have an incentive to make investments (in electronics, fishing gear, etc.) that allow them to catch as much fish as quickly as possible. This competitive advantage, however, dissipates as other vessels make similar investments, leading to repetitive and wasteful rounds of investment in order to catch the same OY. This type of inefficiency, which occurs under the status quo and can also be expected under capacity reduction programs that restrict the number of boats (limited entry, buyout, permit stacking), does not occur in IFQ fisheries, because there is no race to fish.”

According to its Strategic Plan, the Council is on record for wishing to undertake IFQ management in its groundfish fisheries, or as an interim measure to take up trawl permit stacking as a means of transitioning the trawl fishery to an IFQ fishery. As with permit stacking, this program will greatly aid the ability to transition to an IFQ fishery.

4.2.2 Long Term Impacts on Dungeness Crab and Pink Shrimp Capacity

In addition, if the program provides conservation benefits to the groundfish fish stocks, current groundfish bycatch restrictions in non-groundfish fisheries, particularly pink shrimp fisheries may be relaxed. It must be noted that the benefits to non-groundfish fee share fisheries may be limited by the extent that latent capacity is activated or effort is increased as the result of the program, or if purchased permits are reissued by the states. For example, one industry representative has indicated that 100 of the Oregon coastal Dungeness crab fishery permits are latent permits. As described elsewhere, the Oregon pink shrimp fishery has a requirement that if the number of active permits falls below 150, a lottery is to be held to return the number of issued permits to 150. Currently there are 186 Oregon permits issued. Therefore, depending on the state fishery, the benefits will be hard to assess until it is known what permits are to be purchased and how the States are to respond to the statutory language that states: "It is the sense of Congress that the States of Washington, Oregon, and California should revoke all permits in each of the fee-share fisheries immediately after the reduction payment, and otherwise to implement appropriate State fisheries management and conservation provisions in each of the fee-share fisheries that establishes a program that meets the requirements of 16 U.S.C. 141861a(b)(1)(B) as if were applicable to fee-share fisheries."

4.3 Alternative 3 Impacts

Alternative 3 (Statutorily Mandated Reduction Program with Fee Collection Cooperation by States) is an alternative that recognizes that the states already have processes for collecting fees from shorebased processors. The statute presents the option to coordinate loan repayment with the states of Washington, Oregon and California. Each state has different rules and regulations governing the collection of fees. In the State of Washington there is a specific bill in the legislature that would allow the State to collect fees to support this Program. Using existing State systems will likely reduce the Federal and industry burden, especially if it avoids the need for designing a Federal system in addition to the existing state system.

However, coordinating with the states may be a time consuming exercise, though it need not prevent implementation of the buyback. Absent state cooperation, NMFS can move to immediately collect the loan via the provisions of the framework rule at relatively minor cost to NMFS. In the event that states pass new laws, NMFS will then examine the state laws and see if they accomplish what is needed from an accounting and audit standpoint. Neither approach will result in negative environmental impacts relative to the status quo.

4.4 Alternative 4 Impacts

Alternative 4 (Statutorily Mandated Reduction Program with Mandatory Vessel Scrapping) is an alternative that would require vessel scrapping to ensure that buyback vessels cannot participate in any Federal, state, high seas, or foreign fishery. Under Alternative 2, only state registered vessels need to be scrapped. Federally registered vessels would permanently surrender and relinquish a Federally documented reduction vessel's worldwide fishing privileges, permanent Federal revocation of the vessel's fisheries endorsement. Under Alternative 2, whether the vessel was scrapped would be dependent on the vessel owner. Vessel owners could find some potential non-fishing uses for their vessels. Under this alternative, vessel owners would not have such an option.

Scrapping a vessel is costly and, if required, could result in higher bids which would reduce the amount of capacity purchased. The following table shows the estimated scrapping costs of vessels for Alternative 4 based upon two fishing capacity reduction programs which occurred in the New England multispecies fishery. The Fishing Capacity Reduction Demonstration Program, which concluded in 1996, resulted in the buyback of 11 vessels. These vessels averaged 63 ft LOA and scrapping costs of the vessels reporting averaged \$6,935. The Fishing Capacity Reduction Initiative, which concluded in 1998, resulted in the buyback of 57 vessels. These vessels averaged 68 ft LOA and scrapping costs of the vessels reporting averaged \$8,705. Most of these vessels were scrapped, some sunk, and one was burned. The method employed may well result in cost differentials. These vessels are slightly smaller than PC groundfish vessels. Due to the larger vessel size in the PC groundfish fishery and inflationary price factors on the available data we have used an estimate of \$10,000 to scrap each vessel.

| # of vessels | cost/vessel | total cost |
|--------------|-------------|-------------|
| 50 vessels | \$10,000 | \$500,000 |
| 75 vessels | \$10,000 | \$750,000 |
| 100 vessels | \$10,000 | \$1,000,000 |

In terms of financial costs, Alternative 2 will engender slightly reduced scrapping costs than Alternative 4. Under Alternative 2, vessel owners are free to find alternative uses for their vessels. For vessel owners who do not have alternative uses for their vessels, they will either have to pay whatever fees to keep the vessel safe at the dock or scrap the vessel. Under Alternative 4, all vessels will have to be scrapped. If it is assumed that there are few alternative

uses for vessels, most bidders will probably base their bids on what they estimate it would cost to scrap the vessel after all useful gear or parts are sold. Moreover, those vessel owners participating in the program are likely to be in a weakened financial condition. Bankrupt vessel owners may not have the financial means to properly scrap their vessels.

In terms of environmental impacts, scrapping vessels may have some benefit. Alternative 4 would minimize the abandonment of vessels, but is likely to increase the cost of the program and not remove as much capacity. Although abandoned vessels, if left at the dock may cause environmental hazards such as those from oil leakage, it would be expected that existing state laws would be sufficient to prevent abandonment. Accordingly, it is not clear that Alternative 4 would provide any additional benefit relative to the preferred alternative.

4.5 Alternative 5 Impacts

Alternative 5, Reduction Program for Other Gear Types, allows gear types other than the limited entry trawlers included in Alternative 2 to participate in the program. These include permits endorsed for longline, pot/trap gear, and those in the open access fishery which has unrestricted participation and is comprised of vessels targeting or incidentally catching groundfish with a variety of gears, excluding groundfish trawl gear. This alternative is not desirable for a variety of reasons. First, the authorizing legislation specifies that only PC groundfish limited entry trawl permits are eligible to participate. This precludes the other gear types and sectors from participating.

Additionally, since trawlers take the vast majority of the groundfish harvest by weight and value, it is logical to target the trawl permit holders to remove the most fishing capacity. In 2001, groundfish trawlers landed 97% of total groundfish harvest by weight and 75% by value. Please see section 3.2 above for more details.

Unlike the limited entry sector, the open access fishery has unrestricted participation which would allow new entrants to enter the fishery, conceivably replacing those vessels removed. Also, the commercial open access groundfish fishery consists of vessels that do not necessarily depend on revenue from the fishery as a major source of income. Thus, targeting these fisheries would not be the best use of resources.

The need for implementing capacity reduction in the fixed gear sablefish fleet, the major component of the limited entry longline/pot trap gear fishery has lessened through permit stacking. A permit stacking program for the 164 sablefish endorsed permits was implemented in August 2001. As of May 2, 2003, the total number of vessels stacking such permits is 40. Twenty two vessels are now fishing the sablefish trip limits of two permits, and 18 vessels are fishing the sablefish trip limits of three permits (the maximum).

Including catcher-processors in the Buyback Program would greatly reduce the amount of shoreside capacity that could be purchased as catcher processors are by far the largest vessels in the fleet. The smallest catcher-processor has a vessel length of 268 feet while the largest non-catcher processor vessel in the fleet has a vessel length of 150 feet. However, the need for

implementing capacity reduction in the catcher-processor fleet was greatly reduced through the formation in 1998 of the Pacific Whiting Conservation Cooperative. Under this voluntary agreement between the catcher processor companies associated with the 10 catcher processor related trawl endorsed permits, each company receives a specific share of the catcher-processor whiting allocation. This arrangement allows adjustments in capacity much like those associated with IFQs.

4.6 Impacts Upon Communities

Fishing communities, as defined in the Magnuson-Stevens Act, include not only the people who actually catch the fish, but also those who share a common dependency on directly related fisheries-dependent services and industries. Many of the coastal communities participate in the PC groundfish fishery in one way or another, whether it be processing, support businesses, port facilities, or as home to fishermen and processing workers.

National Standard 8 of the Magnuson-Stevens Act mandates that conservation and management shall, consistent with the conservation requirements of this Act (including the prevention of overfishing and the rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to provide for the sustained participation of such communities, and to the extent practicable, minimize adverse economic impacts on such communities.

Overall, the economic impact to communities where PC groundfish is landed and processed would be marginal because the OYs would not be altered with the implementation of this program. The communities would most likely see very little change since the total landings of groundfish would remain at current levels. Some beneficial impacts may occur since this program would provide up to \$46 million to successful bidders. Much of this would be reinvested in the various communities which serve as home ports to the vessels and a portion would be recovered by the Government through income taxes. Employment opportunities for crew members may be reduced when vessels are removed from the fishery. However, those vessels remaining in the fishery will likely experience increased fishing opportunities which may balance the crew job losses from the vessels removed.

Fishing communities on the WOC coasts depend on commercial and/or recreational fisheries for many species. Participants in these fisheries employ a variety of fishing gears and combinations of gears. Naturally, community patterns of fishery participation vary coast wide and seasonally, based on species availability, the regulatory environment, and oceanographic and weather conditions. Each community is characterized by its unique mix of fishery operations, fishing areas, habitat types, seasonal patterns, and target species. While each community is unique, there are many similarities. For example, all face danger, safety issues, dwindling resources, and a multitude of state and Federal regulations.

Individuals make up unique communities with differing cultural heritages and economic characteristics. Examples include a Vietnamese fishing community of San Francisco Bay and an Italian fishing community of Southern California. Native American communities with an

interest in the groundfish fisheries are also considered. In most areas, fishers with a variety of ethnic backgrounds come together to form the fishing communities within local areas, drawn together by their common interests in economic and physical survival in an uncertain and changing ocean and regulatory environment.

The largest PC groundfish limited entry trawl fleets are in Astoria, Washington; Charleston, Oregon; Crescent City, California; Fields Landing, California; Fort Bragg, California; Newport, Oregon; and Westport, Washington. These are primarily engaged in the shelf and slope fisheries, but a majority are also engaged near shore.

4.7 Essential Fish Habitat

None of these alternatives would be expected to have an adverse impact on essential fish habitat (EFH) because the alternatives should not result in increased interactions between fishing operations and the essential fish habitat for PC groundfish. Also, none of the alternatives are expected to result in a change in fishing methodology, gear usage, or fishing area. The reduction program considered under the alternatives would not affect the amount of fish taken in the groundfish, coastal Dungeness crab, or pink shrimp fisheries. Consequently, neither EFH consultation nor further consideration of potential impacts on EFH is necessary.

4.8 Cumulative Effects

Cumulative effects must be considered when evaluating the alternatives considered in the EA. Cumulative impacts are those combined effects on the quality of the human environment that result from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions, regardless of what Federal or non-Federal agency or person undertakes such other actions.

The area that would be affected by implementing Alternative 2 is the marine area associated with the PC groundfish, coastal Dungeness crab and pink shrimp fisheries off the West Coast states. The potential direct and indirect effects of Alternative 2 are discussed above in Section 4.2 above.

Of the past, proposed, and foreseeable future actions that are expected to affect these same waters and fishermen, the most notable action is the annual PC groundfish specifications and management measures process. To support this process, related actions include observer and enforcement monitoring; the upcoming implementation of a vessel monitoring system (VMS); the development of rebuilding plans for overfished species; future plans to reduce bycatch, capacity, and negative effects on EFH; and changes in socio-economic conditions.

PC groundfish specifications and management measures are adopted annually for the EEZ to address many purposes including restoring overfished stocks and maintaining healthy stocks. Trip limits are employed to address conservation and management issues as well as to foster the goal of achieving a year-round fishery. For many years to come, large-scale depth-based restrictions for fishing across much of the continental shelf have been adopted and are intended

to further the conservation and management goals and objectives of the FMP by allowing fishing to continue in areas and with gears that can harvest more abundant stocks with little incidental catch of low abundance species.

Implementation of Alternative 2 would not have a negative effect on the PC groundfish specifications and management measures process and may have a positive effect. Reducing the number of trawl vessels may allow for the adoption of less restrictive management measures that yield equivalent or increased conservation benefits compared with the status quo. By reducing the number of vessels that can fish for groundfish, the amount of overfished species bycatch and the amount of physical contact between fishing gear and EFH could potentially be reduced compared to the status quo. By reducing the number of vessels, current levels of observer and enforcement resources would be able to cover a larger percentage of the total fishery. Additionally, fewer vessels would need to purchase VMS equipment. Reducing the number of vessels in the Pacific groundfish fishery would also enhance the ability of the Council to implement future capacity reduction programs such as those associated with IFQs and trawl permit stacking.

Implementing Alternative 2 would have potential long-term socio-economic effects. Some harvesters would immediately leave the fishery. Those remaining in the PC groundfish, pink shrimp and coastal Dungeness crab fisheries would be responsible for repaying the industry loan over a 30-year period. However, those remaining in these fisheries would benefit by being able to access a greater portion of the available fish associated with these fisheries.

Processors would have access to fewer fishermen and vessels but will benefit from being able to process greater amounts of fish should the program help foster the rebuilding of fish stocks. Processors would also incur incremental increases to their current administrative costs for collecting state landings fees; but some portion of such costs will also be passed on to the harvest sector through adjustments in the payment of ex-vessel prices. Long-term ex-vessel prices will be affected as the number of fishermen participating will be reduced and because ex-vessel prices will now reflect the administrative costs incurred by the processors, the fees paid by the fishermen, and any changes to the profits remaining fishermen earn as a result of having less competition with other fishermen.

Compared to the status quo, total harvest and revenue will not decrease and may increase. Therefore, the total amount of income that flows to West Coast fishing communities should not decrease and may increase. However, some fishing communities may suffer long-term economic losses and have to adapt to have a smaller fleet operating from their port. Other fishing communities may benefit from the sudden cash infusion to the local economy generated by the payments received by winning bidders in the program.

Implementation of the Proposed Action (i.e., Alternative 2) would not have a negative effect on foreseeable state management actions and may, for many of the same reasons discussed immediately above, have a potential positive effect. Should states participate in the fee-collection aspects, the costs incurred would be minor and incremental to existing state fee collection activities.

4.9 Environmental Justice

E. O. 12898 requires agencies to identify and address disproportionately high and adverse environmental effects of its regulations on the activities of minority and low-income populations. The Council on Environmental Quality has published guidelines to ensure that Federal actions are implemented in a manner to provide environmental justice under NEPA. The PC groundfish fishery and this program have been examined for impacts on minority populations, low income populations, and Indian tribes.

NMFS has made full use of the available data regarding the PC groundfish fishery. Although these databases provide information on when, where, and how these vessels fish and the productivity of their fishing trips, there is a general lack of data on social and economic aspects of the PC groundfish fishery. Specific data on the number of individuals employed is not available due to confidentiality issues, and a detailed demographic analysis of impacts upon participants cannot be conducted. The following information is provided to demonstrate that the program would comply with environmental justice as directed under NEPA. NMFS believes that the most significant economic and social effects would be experienced by communities at large, and would not fall disproportionately nor specifically on minority or low income communities. In fact, there are programs in place to ensure that such programs as the fishing capacity reduction program do not accidentally target minority and low income communities.

In 1994, the U.S. government formally recognized that the four Washington Coastal Tribes (Makah, Quileute, Hoh, and Quinault) have treaty rights to fish for groundfish, and concluded that, in general terms, the quantification of those rights is 50 percent of the harvestable surplus of groundfish available in the tribes' usual and accustomed fishing areas. West Coast treaty tribes have formal allocations for sablefish, black rockfish, and Pacific whiting. Members of the four coastal treaty tribes participate in commercial, ceremonial, and subsistence fisheries for groundfish off the Washington coast. Participants in the tribal commercial fisheries operate off Washington and use similar gear to non-tribal fishers. Groundfish caught in the tribal commercial fishery pass through the same markets as non-tribal commercial groundfish catch.

There are several groundfish species taken in tribal fisheries for which the tribes have no formal allocations. For some species on which the tribes have a modest harvest, no specific allocation has been determined. Rather than try to reserve specific allocations of these species, the tribes annually recommend trip limits for these species to the Council that accommodate modest tribal fisheries. Tribal trip limits for groundfish species without tribal allocations are usually intended to constrain direct catch and incidental retention of overfished species in the tribal groundfish fisheries.

The bulk of tribal groundfish landings occur during the March-April halibut and sablefish fisheries. Most continental shelf species taken in the tribal groundfish fisheries are taken during the halibut fisheries and most slope similarly taken during the tribal sablefish fisheries. Approximately one-third of the tribal sablefish allocation is taken during an open competition fishery, in which member vessels from the sablefish tribes all have access to this portion of the overall tribal sablefish allocation. The open competition portion tends to be taken during the

same period as the major tribal commercial halibut fisheries in March and April. The remaining two-thirds of the tribal sablefish allocation are split between the sablefish tribes according to a mutually agreed-upon allocation scheme. Tribe-specific sablefish allocations are managed by the individual sablefish tribes, beginning in March and lasting into the autumn, depending on vessel participation management measures used. Participants in the halibut and sablefish fisheries tend to use hook-and-line gear, as required by the International Pacific Halibut Commission.

In addition to these hook-and-line fisheries, the Makah tribe annually harvests a whiting allocation using mid-water trawl gear. Since 1996, a portion of the U.S. whiting OY has been allocated to the PC treaty tribes. The tribal allocation is subtracted from the whiting OY before allocation to the nontribal sectors. Since 1999, the tribal allocation has been based on a framework that is a sliding scale related to the U.S. whiting OY. To date, only the Makah tribe has fished on the tribal whiting allocation.

5.0 Regulatory Impact Review

E. O. 12866, signed in October of 1993, requires Federal agencies, including NMFS, to assess all costs and benefits of available regulatory alternatives, including both quantitative and qualitative measures. Such economic and social impacts should include the identification of the individuals or groups that may be affected by the action, the nature of these impacts, quantification of the economic impacts if possible, and discussion of the trade-offs between qualitative and quantitative benefits and costs. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits, unless a statute requires another regulatory approach.

E.O. 12866 requires that the Office of Management and Budget review proposed regulatory actions that are considered to be “significant”. A “significant” regulatory action is one that is likely to:

1. Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
4. Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in this Executive Order.

A regulatory program is “significant” if it is likely to result in any of the effects described above. The RIR is designed to provide information to determine whether the proposed action is likely to be “economically significant”. The Office of Management and Budget has determined that this notice is “significant” under E.O. 12866.

This program will provide up to \$46 million to reduce fishing capacity in the PC groundfish, coastal Dungeness crab, and pink shrimp fisheries off WOC. The discussion of the impacts in Section 4 serves as a qualitative review of the benefits and costs of the program. Once the buyback bids are received, ranked and analyzed, the benefits and costs of this program can be better assessed. Please refer to the preceding sections of this document for pertinent background information, a description of the PC groundfish fishery, and the alternatives considered.

5.1 Economic Impact of Proposed Alternatives

Please refer to Sections 4.1 through 4.5, Impacts of the Alternatives, for a discussion of the potential economic impacts.

6.0 Other Regulatory Considerations

6.1 Endangered Species Act Considerations

The ESA provides for the conservation of endangered and threatened species of fish, wildlife, and plants. The program is administered by the NMFS for most marine mammal species, marine and anadromous fish species, and marine plant species and by the U.S. Fish & Wildlife Service (FWS) for bird species, and terrestrial and freshwater wildlife and plant species.

The designation of an ESA-listed species is based on the biological health of that species. The status determination is either threatened or endangered. Threatened species are those likely to become endangered in the foreseeable future. Endangered species are those in danger of becoming extinct throughout all or a significant portion of their range. Species can be listed as endangered without first being listed as threatened. The Secretary of Commerce, acting through NMFS, is authorized to list marine fish, plants, and mammals (except for walrus and sea otter) and anadromous fish species. The Secretary of the Interior, acting through the FWS, is authorized to list walrus and sea otter, seabirds, terrestrial plants and wildlife, and freshwater fish and plant species. Both agencies share responsibility for listing sea turtles.

In addition to listing species under the ESA, the critical habitat of a newly listed species must be designated concurrent with its listing to the "maximum extent prudent and determinable". The ESA defines critical habitat as those specific areas that are essential to the conservation of a listed species and that may be in need of special consideration. Federal agencies are prohibited from undertaking actions that destroy or adversely modify designated critical habitat.

Federal actions, activities or authorizations must be in compliance with the provisions of the ESA. Section 7 of the Act provides a mechanism for consultation by the Federal action agency with the appropriate expert agency (NMFS or FWS). Informal consultations, resulting in letters of concurrence, are conducted for Federal actions that have no adverse effects on the listed species. Formal consultations, resulting in biological opinions (B.O.), are conducted for Federal actions that may have an adverse effect on the listed species or adversely modify their critical habitat. Through the B.O., a determination is made as to whether the proposed action poses "jeopardy" or "no jeopardy" of extinction to the listed species, or whether the proposed action would adversely modify listed species' critical habitat. If the determination is that the action proposed (or ongoing) would cause jeopardy, reasonable and prudent alternatives may be suggested which, if implemented, would modify the action to no longer pose the jeopardy of extinction to the listed species. These reasonable and prudent alternatives must be incorporated into the Federal action if it is to proceed. A biological opinion with the conclusion of no jeopardy may contain a series of management measures intended to further reduce the negative impacts to the listed species. These management alternatives are advisory to the action agency [50 CFR. 402.24(j)]. If a likelihood exists of any taking occurring during promulgation of the action, an incidental take statement may be appended to a biological opinion to provide for the amount of take that is expected to occur from normal promulgation of the action. An incidental take statement is not the equivalent of a permit to take.

6.1.1 Section 7 Consultations

Because the PC groundfish fishery is a Federally regulated activity, any negative effects of the fishery on listed species or critical habitat and any takings that may occur are subject to ESA section 7 consultation. NMFS initiates the consultation and the resulting biological opinions are issued to NMFS. The Council may be invited to participate in the compilation, review, and analysis of data used in the consultations. The determination of whether the action "is likely to jeopardize the continued existence of" endangered or threatened species or to result in the destruction or adverse modification of critical habitat, however, is the responsibility of the appropriate agency (NMFS or FWS). If the action is determined to result in jeopardy, the opinion includes reasonable and prudent measures that are necessary to alter the action so that jeopardy is avoided. If an incidental take of a listed species is expected to occur under normal promulgation of the action, an incidental take statement is appended to the biological opinion.

NMFS issued Biological Opinions (B.O.) under the ESA on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999 pertaining to the effects of the groundfish fishery on chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal), chum salmon (Hood Canal summer, Columbia River), sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south-central California, northern California, southern California).

During the 2000 Pacific whiting season, the whiting fisheries exceeded the 11,000 fish chinook bycatch amount specified in the Pacific whiting fishery B.O. (December 19, 1999) incidental take statement, by approximately 500 fish. In the 2001 whiting season, however, the whiting fishery's chinook bycatch was about 7,000 fish, which approximates the long-term average. After reviewing data from, and management of, the 2000 and 2001 whiting fisheries (including industry bycatch minimization measures), the status of the affected listed chinook, environmental baseline information, and the incidental take statement from the 1999 whiting B.O., NMFS determined that a re-initiation of the 1999 whiting BO was not required.

None of the alternatives considered for this action are expected to have an adverse impact on endangered, threatened, or candidate species or critical habitat because none affect the fish landed or the methods used for catching groundfish. None of the alternatives would affect takes of listed species. None of the alternatives under consideration would affect the prosecution of the PC groundfish fishery in a way not previously considered in the consultations discussed above. The proposed alternatives are designed to improve the effectiveness of the management of PC groundfish fishery.

The following species are subject to the conservation and management requirements of the ESA:

| West Coast Endangered Species |
|---|
| Marine Mammals |
| <p>Threatened:</p> <ul style="list-style-type: none"> • Steller sea lion (<i>Eumetopias jubatus</i>) Eastern Stock • Guadalupe fur seal (<i>Arctocephalus townsendi</i>) • Southern sea otter (<i>Enhydra lutris</i>) California Stock <p>Endangered:</p> <ul style="list-style-type: none"> • Fin whale (<i>Balaenoptera physalus</i>) • Sei whale (<i>Balaenoptera borealis</i>) • Sperm whale (<i>Physeter catodon</i>) • Humpback whale (<i>Megaptera novaeangliae</i>) • Blue whale (<i>Balaenoptera musculus</i>) |
| Seabirds |
| <p>Endangered:</p> <ul style="list-style-type: none"> • Short-tail albatross (<i>Phoebastria (=Diomedea) albatrus</i>) • California brown pelican (<i>Pelecanus occidentalis</i>) • California least tern (<i>Sterna antillarum browni</i>) <p>Threatened:</p> <ul style="list-style-type: none"> • Marbled murrelet (<i>Brachyramphs marmoratus</i>) |
| Sea Turtles |
| <p>Endangered:</p> <ul style="list-style-type: none"> • Green turtle (<i>Chelonia mydas</i>) • Leatherback turtle (<i>Dermochelys coriacea</i>) • Olive ridley turtle (<i>Lepidochelys olivacea</i>) <p>Threatened:</p> <ul style="list-style-type: none"> • Loggerhead turtle (<i>Caretta caretta</i>) |
| Marine Mollusks |
| <p>Endangered:</p> <ul style="list-style-type: none"> • White abalone (<i>Haliotis sorenseni</i>) |

| Salmon |
|---|
| <p>Endangered:</p> <ul style="list-style-type: none"> • Chinook salmon (<i>Oncorhynchus tshawytscha</i>) Sacramento River Winter; Upper Columbia Spring • Sockeye salmon (<i>Oncorhynchus nerka</i>) Snake River • Steelhead trout (<i>Oncorhynchus mykiss</i>) Southern California; Upper Columbia <p>Threatened:</p> <ul style="list-style-type: none"> • Coho salmon (<i>Oncorhynchus kisutch</i>) Central California, Southern Oregon, and Northern California Coasts • Chinook salmon (<i>Oncorhynchus tshawytscha</i>) Snake River Fall, Spring, and Summer; Puget Sound; Lower Columbia; Upper Willamette; Central Valley Spring; California Coastal • Chum salmon (<i>Oncorhynchus keta</i>) Hood Canal Summer; Columbia River • Sockeye salmon (<i>Oncorhynchus nerka</i>) Ozette Lake • Steelhead trout (<i>Oncorhynchus mykiss</i>) South-Central California, Central California Coast, Snake River Basin, Lower Columbia, California Central Valley, Upper Willamette, Middle Columbia, Northern California |

6.1.2 Seabirds

Over sixty species of seabirds occur in waters off the West Coast within the EEZ. These species include: loons, grebes, albatross, fulmars, petrels, shearwaters, storm-petrels, pelicans, cormorants, frigate birds, phalaropes, skuas, jaegers, gulls, kittiwakes, skimmers, terns, guillemots, murrelets, auklets, and puffins. The migratory range of these species includes commercial fishing areas; fishing also occurs near the breeding colonies of many of these species.

Interactions between seabirds and fishing operations are wide-spread and have led to conservation concerns in many fisheries throughout the world. Abundant food in the form of offal (discarded fish and fish processing waste) and bait attract birds to fishing vessels. Of the gear used in the groundfish fisheries on the West Coast, seabirds are occasionally taken incidentally by trawl and pot gear, but they are most often taken by longline gear. Around longline vessels, seabirds forage for offal and bait that has fallen off hooks at or near the water's surface and are attracted to baited hooks near the water's surface during the setting of gear. If a bird becomes hooked while feeding on bait or offal, it can be dragged underwater and drowned.

Besides entanglement in fishing gear, seabirds may be indirectly affected by commercial fisheries in various ways. Change in prey availability may be linked to directed fishing and the discarding of fish and offal. Vessel traffic may affect seabirds when it occurs in and around important foraging and breeding habitat and increases the likelihood of bird storms. In addition, seabirds may be exposed to at-sea garbage dumping and the diesel and oil discharged into the water associated with commercial fisheries.

6.1.3 Sea Turtles

Sea turtles are highly migratory; four of the six species found in U.S. waters have been sighted off the West Coast. Little is known about the interactions between sea turtles and West Coast commercial fisheries. The directed fishing for sea turtles in the PC groundfish fishery is prohibited, because of their ESA listings, but the incidental take of sea turtles by longline or trawl gear may occur. Sea turtles are known to be taken incidentally by the California-based pelagic longline fleet and the California halibut gillnet fishery. Because of differences in gear and fishing strategies between those fisheries and the PC groundfish fishery, the expected take of sea turtles by groundfish gear is minimal. The management and conservation of sea turtles is shared between NMFS and FWS.

Sea turtles may be also indirectly affected by commercial fisheries. Sea turtles are vulnerable to collisions with vessels and can be killed or injured when struck, especially if struck with an engaged propeller. Entanglement in abandoned fishing gear can also cause death or injury to sea turtles by drowning or loss of a limb. The discard of garbage at sea can be harmful for sea turtles, because the ingestion of such garbage may choke or poison them. Sea turtles have ingested plastic bags, beverage six-pack rings, styrofoam, and other items commonly found aboard fishing vessels. The accidental discharge of diesel and oil from fishing vessels may also put sea turtles at risk, as they are sensitive to chemical contaminants in the water.

6.1.4 Salmon

Salmon caught in the West Coast fishery have life cycle ranges that include coastal streams and river systems from central California to Alaska and oceanic waters along the U.S. and Canada seaward into the north central Pacific Ocean, including Canadian territorial waters and the high seas. Some of the more critical portions of these ranges are the freshwater spawning grounds and migration routes.

Chinook or king salmon (*Oncorhynchus tshawytscha*) and coho or silver salmon (*O. kisutch*) are the main species caught in Council-managed ocean salmon fisheries. In odd-numbered years, catches of pink salmon (*O. gorbuscha*) can also be significant, primarily off Washington and Oregon. Ocean salmon are caught with commercial and recreational troll gear. No other gears are allowed to take and retain salmon in the ocean fisheries. Small amounts of rockfish and other groundfish are taken as incidental catch in salmon troll fisheries.

6.2 Marine Mammal Protection Act Considerations

Fisheries that interact with species listed as depleted, threatened, or endangered may be subject to management restrictions under the MMPA and ESA. NMFS publishes an annual list of fisheries in the Federal Register separating commercial fisheries into one of three categories, based on the level of serious injury and mortality of marine mammals occurring incidentally in that fishery. The categorization of a fishery in the list of fisheries determines whether participants in that fishery are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements. The PC groundfish fisheries are in Category III, indicating a remote likelihood of, or no known serious injuries or mortalities, to marine mammals. Based on its Category III status, the incidental take of marine mammals in the PC groundfish fisheries does not significantly impact marine mammal stocks.

The waters off WOC support a wide variety of marine mammals. Approximately thirty species, including seals and sea lions, sea otters, and whales, dolphins, and porpoise, occur within the EEZ. Many marine mammal species seasonally migrate through West Coast waters, while others are year round residents.

Limited information documenting the interactions of groundfish fisheries and marine mammals exists, but marine mammals may be affected by many aspects of groundfish fisheries. The incidental take of marine mammals, defined as any serious injury or mortality resulting from commercial fishing operations, is reported to NMFS by vessel operators. In the West Coast groundfish fisheries, incidental take is infrequent and primarily occurs in trawl fisheries. Indirect effects of groundfish fisheries on marine mammals are more difficult to quantify due to a lack of behavioral and ecological information about marine mammals. However, marine mammals may be affected by increased noise in the oceans, change in prey availability, habitat changes due to fishing gear, vessel traffic in and around important habitat (e.g., areas used for foraging, breeding, raising offspring, or hauling-out), at-sea garbage dumping, and diesel or oil discharged into the water associated with commercial fisheries. Regardless, none of the alternatives considered will increase any of the effects listed and thus would not significantly impact marine mammals.

6.3 Coastal Zone Management Act Considerations

Implementation of any of the alternatives would be conducted in a manner consistent with the WOC Coastal Zone Management Programs in accordance with Section 307(c)(1) of the CZMA of 1972 and its implementing regulations. Letters to this effect were sent to the States of WOC for comment on April 3, 2003. The California Coastal Commission responded on April 10, 2003 that it will not act on NMFS' determination. Neither Oregon or Washington responded, therefore NMFS consistency determination is presumed because none of the states either concurred or objected.

6.4 Description of Reasons for Action and Statement of Objective and Legal Basis

A description of why the agency is considering this action as well as a statement of objectives and legal basis is included in section 1.1.

6.5 Description of Recordkeeping and Compliance Costs

Reporting, recordkeeping, and other compliance requirements associated with this notice would be the responsibility of the processors, most of which are considered small entities. Please see section 3.6 for a discussion on the processing sector. This notice contains collection of information requirements subject to the Paperwork Reduction Act and which have been approved by OMB under control number 0648-0376.

6.6 Description of Small Entities to Which the Notice Applies

The Small Business Administration (SBA) has defined small entities as all fish harvesting businesses that are independently owned and operated, not dominant in its field of operation, and with annual receipts of \$3 million or less. In addition, processors with 500 or fewer employees for related industries involved in canned and cured fish and seafood, or preparing fresh fish and seafood, are also considered small entities. According to the SBA's definition of a small entity, virtually all of the catcher vessels are considered small entities as well as most of the shoreside processors.

6.7 Duplication or Conflict with Other Federal Rules

This rule does not duplicate or conflict with any Federal rules of which NMFS is aware.

6.8 Executive Order 13132 Federalism

Any Federalism implications arising from this notice are highly unlikely, however consultations with the States of Washington, Oregon, and California are ongoing.

6.9 Executive Order 13175 Consultation and Coordination with Indian Tribal Governments

E.O. 13175 is intended to ensure regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the U.S. government to government relationships with Indian tribes, and to reduce the imposition of unfunded mandates on Indian tribes. This program will not have substantial direct effects on Indian tribes and is therefore not applicable.

6.10 Regulatory Flexibility Act Considerations

Analytical requirements of the RFA are not applicable to this action because NMFS is not publishing proposed regulations for this program.

7.0 List of Agencies Consulted in Formulating the Notice

Other agencies consulted in formulating this rule include:

- California Department of Fish and Game
- NMFS-Domestic Fisheries Division
- NMFS-Financial Services Division
- NMFS-Northwest Regional Office
- NMFS-Regulatory Services Division
- NOAA-Office of General Counsel
- Oregon Department of Fish and Wildlife
- Pacific Fishery Management Council
- Washington Department of Fish and Wildlife

7.1 List of Preparers

This EA/RIR was prepared by individuals from the Office of Constituent Services, National Marine Fisheries Service in Silver Spring, MD and the Sustainable Fisheries Division, National Marine Fisheries Service in Seattle, WA:

- Michael Sturtevant, Office of Constituent Services, Financial Services Division
- Stephen Freese, Northwest Region, Sustainable Fisheries Division

8.0 Finding of No Significant Impact (FONSI)

NOAA Administrative Order 216-6 provides guidance for determining the significance of the impacts of a proposed action. The nine criteria are discussed below:

1. *Can the proposed action be reasonably expected to jeopardize the sustainability of any target species that may be affected by the action?*

The impacts of the proposed action are discussed in section 4.2.1 of this document. The proposed action is not expected to jeopardize the sustainability of any target species that may be affected by this action because OY's will not be effected.

2. *Can the proposed action be reasonably expected to allow substantial damage to the ocean and coastal habitats and/or EFH as defined under the Magnuson-Stevens Act and identified in FMPs?*

Impacts of the proposed action on habitat, including the EFH assessment, are discussed in section 4.7 of this document. The proposed action will not change the prosecution of the fishery or its impacts on the ocean and coastal habitats and/or EFH as defined under the Magnuson-Stevens Act and identified in the FMP.

3. *Can the proposed action be reasonably expected to have a substantial adverse impact on public health or safety?*

The proposed action is not expected to have a substantial adverse impact on public health or safety.

4. *Can the proposed action be reasonably expected to have an adverse impact on endangered or threatened species, marine mammals, or critical habitat of these species?*

The proposed action can be reasonably expected to not have an adverse impact on endangered species, marine mammals, or critical habitat for these species as discussed in sections 6.1 and 6.2 of this document.

5. *Can the proposed action be reasonably expected to result in cumulative adverse effects that could have a substantial effect on the target species or non-target species?*

Cumulative effects are discussed in section 4.8 of this document. This proposed action is not expected to result in cumulative adverse effects that could have a substantial effect on target or non-target species.

6. *Can the proposed action be reasonably expected to jeopardize the sustainability of any non-target species?*

The proposed action is not expected to jeopardize the sustainability of any non-target species. As discussed in section 4.2, this program contains constraints to minimize the ability of groundfish

vessels from redirecting into a previously non-target fishery to the extent that the shift in effort would jeopardize the sustainability of that resource.

7. Can the proposed action be expected to have a substantial impact on biodiversity and ecosystem function within the affected area (e.g., benthic productivity, predator-prey relationships, etc.)?

The proposed action is not expected to have a substantial impact on biodiversity and ecosystem function within the affected area because this action would not change fishing gear types or methods.

8. Are significant social or economic impacts interrelated with significant natural or physical environmental effects?

The analyses for this action concluded that neither the natural or physical environmental effects nor the economic and social effects are significant.

9. To what degree are the effects on the quality of human environment expected to be highly controversial?

This action's effects on the quality of the human environment are not expected to be controversial. Participation in this program is voluntary and a majority of permit owners must approve the program by referendum before any capacity is reduced.

FONSI Statement

In view of the analysis presented in this document, the PC groundfish capacity reduction program will not significantly affect the quality of the human environment with specific reference to the criteria contained in NOAA Administrative Order 216-6 implementing NEPA. Accordingly, the preparation of an EIS for this proposed action is not necessary.

Assistant Administrator
for Fisheries, NOAA

Date

9.0 References

- Council on Environmental Quality, Washington, D.C. Environmental Justice, Guidance Under the National Environmental Policy Act. December 10, 1997.
- NMFS, Office of Sustainable Fisheries, Silver Spring, MD. Guidelines for Economic Analysis of Fishery Management Actions. August 16, 2000.
- NMFS, Silver Spring, MD. Procedures for Development of Regulations. October 1992.
- NMFS, Preliminary Draft. Environmental Assessment/Regulatory Impact Review/Regulatory Flexibility Analysis for a Program to Monitor Time-Area Closures in the Pacific Coast Groundfish Fishery. February, 2003.
- NMFS, Northwest Region Sustainable Fisheries Division and Northwest Fisheries Science Center, Seattle. Pacific Coast Groundfish Open Access Fishery Report (Working Draft). May 29, 2002.
- NOAA, Silver Spring, MD. Environmental Review Procedures for Implementing the National Environmental Policy Act. May 20, 1999.
- Pacific Fishery Management Council, Portland, OR. Final Environmental Impact Statement for the Proposed Groundfish Acceptable Biological Catch and Optimum Yield Specifications and Management Measures 2003 Pacific Coast Groundfish Fishery. January, 2003.
- Pacific Fishery Management Council, Portland, OR. Scientific and Statistical Committee, Overcapitalization in the West Coast Groundfish Fishery: Background, Issues and Solutions. March 16, 2000.
- Pacific Fishery Management Council, Portland, OR. Amendment 6 (Limited Entry) to the Fishery Management Plan for Pacific Coast Groundfish Including Supplemental Environmental Impact Statement and Regulatory Impact Review. January, 1992.

10.0 List of Acronyms

ABC - Acceptable Biological Catch
B.O. - Biological Opinion
CFR - Code of Federal Regulations
CZMA - Coastal Zone Management Act
EA - Environmental Assessment
EEZ - Exclusive Economic Zone
EFH - Essential Fish Habitat
EIS - Environmental Impact Statement
E.O. - Executive Order
ESA - Endangered Species Act
FMP - Fishery Management Plan for Pacific Coast Groundfish
FONSI - Finding of No Significant Impact
FWS - U.S. Fish & Wildlife Service
IFQ - Individual Fishing Quota
LOA - Length Overall
MMPA - Marine Mammal Protection Act
NEPA - National Environmental Policy Act
NMFS - National Marine Fisheries Service
NOAA - National Oceanic and Atmospheric Administration
OMB - Office of Management and Budget
OY - Optimum Yield
PC - Pacific Coast
RFA - Regulatory Flexibility Act
RIR - Regulatory Impact Review
SBA - Small Business Administration
WOC - Washington, Oregon, and California

Appendix 1 Major Congressional and Statutory Directives

Adapted from: Consolidated Appropriations Resolution 2003
Division N--Emergency Relief and Offsets
Title V--Fisheries Disasters
(Page H.J. Res.2--539)

TITLE V--FISHERIES DISASTERS

Sec. 501. (a) Fisheries Disasters.--In addition to amounts appropriated or otherwise made available, \$100,000,000 is appropriated to the Department of Commerce for fisheries disaster assistance. Not more than 5 percent of such funds may be used for administrative expenses, and no funds may be used for lobbying activities or representational expenses.

....

(c) Northeast and West Coast.--\$10,000,000 shall be made to conduct a voluntary fishing capacity reduction program in the Northeast multispecies fishery and \$10,000,000 shall be made available to conduct a voluntary fishing capacity reduction program in the West Coast groundfish fishery. Such sums shall supplement the voluntary capacity reduction program authorized for the fishery in section 211 of Public law 107-206 and be consistent with 312(b) of the Magnuson-Stevens Fishery Conservation and Management Act and the requirements relating to the capacity program in section 211 of Public Law 107-206 that shall--

(1) permanently revoke all fishery licenses, fishery permits, area and species endorsements and any other fishery privileges issued to a vessel or vessels (or to persons on the basis of their operation of that vessel or vessels) removed under the program; and

(2) ensure that vessels removed under the program are made permanently ineligible to participate in any fishery worldwide, and that the owners of such vessels will operate only under the United States flag or be scrapped as a reduction vessel pursuant to section 600.1011(c) of title 50, Code of Federal Regulations.

Conference Report to Accompany H.J. Res. 2

Adapted from 108th Congress House Representatives, Report 108-10 (February 13 (legislative day, February 12), 2003): MAKING FURTHER CONTINUING APPROPRIATIONS FOR THE FISCAL YEAR 2003, AND FOR OTHER PURPOSES (page 70)

SEC. 212 . (a) The Secretary of Commerce shall implement a fishing capacity reduction program for the West Coast groundfish fishery pursuant to section 212 of P.L. 107-206 and 16 U.S.C. 1861a(b)-(e) except that: the program may apply to multiple fisheries, except that within 90 days after the date of enactment of this Act, the Secretary shall publish a public notice in the Federal Register and issue an invitation to bid for reduction payments that specifies the contractual terms and conditions under which bids shall be made and accepted under this section; except that: Section 144(d)(1)(K)(3) of title I, division B of P.L. 106-554 shall apply to the program implemented by this section.

(b) A reduction fishery is eligible for capacity reduction under the program implemented under this section; except that no vessel harvesting and processing whiting in the catcher-processors sector (section 19 660.323(a)(4)(A) of title 50, Code of Federal Regulations) may participate in any capacity reduction referendum or industry fee established under this section.

(c) A referendum on the industry fee system shall occur after bids have been submitted, and such bids have been accepted by the Secretary, as follows: members of the reduction fishery, and persons who have been issued Washington, Oregon, or California coastal Dungeness crab and Pink shrimp permits, shall be eligible to vote in the referendum to approve an industry fee system; referendum votes cast in each fishery shall be weighted in proportion to the debt obligation of each fishery, as calculated in subsection (f) of this section; the industry fee system shall be approved if the referendum votes cast in favor of the proposed system constitute a simple majority of the participants voting; except that notwithstanding 5 U.S.C. 553 and 16 U.S.C. 1861a(e), the Secretary shall not prepare or publish proposed or final regulations for the implementation of the program under this section before the referendum is conducted.

(d) Nothing in this section shall be construed to prohibit the Pacific Fishery management Council from recommending, or the Secretary from approving, changes to any fishery management plan, in accordance with applicable law; or the Secretary from promulgating regulations (including regulations governing this program), after an industry fee system has been approved by the reduction fishery.

(e) The Secretary shall determine, and state in the public notice published under paragraph (a), all program implementation aspects the Secretary deems relevant.

(f) Any bid submitted in response to the invitation to bid issued by the Secretary under this section shall be irrevocable; the Secretary shall use a bid acceptance procedure that ranks each bid in accordance with this paragraph and with additional criteria, if any, established by the Secretary: for each bid from a qualified bidder that meets the bidding requirements in the public notice or the invitation to bid, the Secretary shall determine a bid score by dividing the bid's dollar amount by the average annual total ex-vessel dollar value of landings of Pacific groundfish, coastal

Dungeness crab, and Pink shrimp based on the 3 highest total annual revenues earned from such stocks that the bidder's reduction vessel landed during 1998, 1999, 2000, or 2001. For purposes of this paragraph, the term "total annual revenue" means the revenue earned in a single year from such stocks. The Secretary shall accept each qualified bid in rank order of bid score from the lowest to the highest until acceptance of the next qualified bid with the next lowest bid score would cause the reduction cost to exceed the reduction loan's maximum amount. Acceptance of a bid by the Secretary shall create a binding reduction contract between the United States and the person whose bid is accepted, the performance of which shall be subject only to the conclusion of a successful referendum, except that a person whose bid is accepted by the Secretary under this section shall relinquish all permits in the reduction fishery and may Coastal Dungeness crab and Pink shrimp permits issued by Washington, Oregon, or California; except that the Secretary shall revoke the Pacific groundfish permit, as well as all Federal fishery licenses, fishery permits, area, and species endorsements, and any other fishery privileges issued to a vessel or vessels (or to persons on the basis of their operation or ownership of that vessel or vessels) removed under the program.

(g) The Secretary shall establish separate reduction loan sub-amounts and repayment fees for fish sellers in the reduction fishery and for fish sellers in each of the fee-share fisheries by dividing the total ex-vessel dollar value during the bid scoring period of all reduction vessel landings from the reduction fishery and from each of the fee-share fisheries by the total such value of all such landings for all such fisheries; and multiplying the reduction loan amount by each of the quotients resulting from each of the divisions above. Each of the resulting products shall be the reduction loan sub-amount for the reduction fishery and for each of the fee-share fisheries to which each of such products pertains; except that, each fish seller in the reduction fishery and in each of the fee-share fisheries shall pay the fees required by the reduction loan sub-amounts allocated to it under this paragraph; except that, the Secretary may enter into agreements with Washington, Oregon, and California to collect any fees established under this paragraph.

(h) Notwithstanding 46 U.S.C. App. 1279(b)(4), the reduction loan's term shall not be less than 30 years.

(i) It is the sense of the Congress that the States of Washington, Oregon, and California should revoke all relinquishment permits in each of the fee-share fisheries immediately after reduction payment, and otherwise to implement appropriate State fisheries management and conservation provisions in each of the fee-share fisheries that establishes a program that meets the requirements of 16 U.S.C. 141861a(b)(1)(B) as if it were applicable to fee-share fisheries.

(j) The term "fee-share fishery" means a fishery, other than the reduction fishery, whose members are eligible to vote in a referendum for an industry fee system under paragraph (c). The term "reduction fishery" means that portion of a fishery holding limited entry fishing permits endorsed for the operation of trawl gear and issued under the Federal Pacific Coast Groundfish Fishery Management Plan.

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SEC. 312. TRANSITION TO SUSTAINABLE FISHERIES 16 U.S.C. 1861a

(a) FISHERIES DISASTER RELIEF.--

(1) At the discretion of the Secretary or at the request of the Governor of an affected State or a fishing community, the Secretary shall determine whether there is a commercial fishery failure due to a fishery resource disaster as a result of--

(A) natural causes;

(B) man-made causes beyond the control of fishery managers to mitigate through conservation and management measures; or

(C) undetermined causes.

(2) Upon the determination under paragraph (1) that there is a commercial fishery failure, the Secretary is authorized to make sums available to be used by the affected State, fishing community, or by the Secretary in cooperation with the affected State or fishing community for assessing the economic and social effects of the commercial fishery failure, or any activity that the Secretary determines is appropriate to restore the fishery or prevent a similar failure in the future and to assist a fishing community affected by such failure. Before making funds available for an activity authorized under this section, the Secretary shall make a determination that such activity will not expand the size or scope of the commercial fishery failure in that fishery or into other fisheries or other geographic regions.

(3) The Federal share of the cost of any activity carried out under the authority of this subsection shall not exceed 75 percent of the cost of that activity.

(4) There are authorized to be appropriated to the Secretary such sums as are necessary for each of the fiscal years 1996, 1997, 1998, and 1999.

(b) FISHING CAPACITY REDUCTION PROGRAM.--

(1) The Secretary, at the request of the appropriate Council for fisheries under the authority of such Council, or the Governor of a State for fisheries under State authority, may conduct a fishing capacity reduction program (referred to in this section as the 'program') in a fishery if the Secretary determines that the program--

(A) is necessary to prevent or end overfishing, rebuild stocks of fish, or achieve measurable and significant improvements in the conservation and management of the fishery;

(B) is consistent with the Federal or State fishery management plan or program in effect for such fishery, as appropriate, and that the fishery management plan--

- (i) will prevent the replacement of fishing capacity removed by the program through a moratorium on new entrants, restrictions on vessel upgrades, and other effort control measures, taking into account the full potential fishing capacity of the fleet; and
- (ii) establishes a specified or target total allowable catch or other measures that trigger closure of the fishery or adjustments to reduce catch; and

(C) is cost-effective and capable of repaying any debt obligation incurred under section 1111 of title XI of the Merchant Marine Act, 1936.

(2) The objective of the program shall be to obtain the maximum sustained reduction in fishing capacity at the least cost and in a minimum period of time. To achieve that objective, the Secretary is authorized to pay--

(A) the owner of a fishing vessel, if such vessel is (i) scrapped, or (ii) through the Secretary of the department in which the Coast Guard is operating, subjected to title restrictions that permanently prohibit and effectively prevent its use in fishing, and if the permit authorizing the participation of the vessel in the fishery is surrendered for permanent revocation and the owner relinquishes any claim associated with the vessel and permit that could qualify such owner for any present or future limited access system permit in the fishery for which the program is established; or

(B) the holder of a permit authorizing participation in the fishery, if such permit is surrendered for permanent revocation, and such holder relinquishes any claim associated with the permit and vessel used to harvest fishery resources under the permit that could qualify such holder for any present or future limited access system permit in the fishery for which the program was established.

(3) Participation in the program shall be voluntary, but the Secretary shall ensure compliance by all who do participate.

(4) The Secretary shall consult, as appropriate, with Councils, Federal agencies, State and regional authorities, affected fishing communities, participants in the fishery, conservation organizations, and other interested parties throughout the development and implementation of any program under this section.

(c) PROGRAM FUNDING.--

(1) The program may be funded by any combination of amounts--

(A) available under clause (iv) of section 2(b)(1)(A) of the Act of August 11, 1939 (15 U.S.C. 713c-3(b)(1)(A); the Saltonstall-Kennedy Act);

(B) appropriated for the purposes of this section;

(C) provided by an industry fee system established under subsection (d) and in accordance with section 1111 of title XI of the Merchant Marine Act, 1936; or

(D) provided from any State or other public sources or private or non-profit organizations.

(2) All funds for the program, including any fees established under subsection (d), shall be paid into the fishing capacity reduction fund established under section 1111 of title XI of the Merchant Marine Act, 1936.

(d) INDUSTRY FEE SYSTEM.--

(1) (A) If an industry fee system is necessary to fund the program, the Secretary, at the request of the appropriate Council, may conduct a referendum on such system. Prior to the referendum, the Secretary, in consultation with the Council, shall--

(i) identify, to the extent practicable, and notify all permit or vessel owners who would be affected by the program; and

(ii) make available to such owners information about the industry fee system describing the schedule, procedures, and eligibility requirements for the referendum, the proposed program, and the amount and duration and any other terms and conditions of the proposed fee system.

(B) The industry fee system shall be considered approved if the referendum votes which are cast in favor of the proposed system constitute a two-thirds majority of the participants voting.

(2) Notwithstanding section 304(d) and consistent with an approved industry fee system, the Secretary is authorized to establish such a system to fund the program and repay debt obligations incurred pursuant to section 1111 of title XI of the Merchant Marine Act, 1936. The fees for a program established under this section shall--

(A) be determined by the Secretary and adjusted from time to time as the Secretary considers necessary to ensure the availability of sufficient funds to repay such debt obligations;

(B) not exceed 5 percent of the ex-vessel value of all fish harvested from the fishery for which the program is established;

(C) be deducted by the first ex-vessel fish purchaser from the proceeds otherwise payable to the seller and accounted for and forwarded by such fish purchasers to the Secretary in such manner as the Secretary may establish; and

(D) be in effect only until such time as the debt obligation has been fully paid.

(e) IMPLEMENTATION PLAN.--

(1) The Secretary, in consultation with the appropriate Council or State and other interested parties, shall prepare and publish in the Federal Register for a 60-day public comment period an implementation plan, including proposed regulations, for each program. The implementation plan shall--

(A) define criteria for determining types and numbers of vessels which are eligible for participation in the program taking into account characteristics of the fishery, the requirements of applicable fishery management plans, the needs of fishing communities, and the need to minimize program costs; and

(B) establish procedures for program participation (such as submission of owner bid under an auction system or fair market-value assessment) including any terms and conditions for participation which the Secretary deems to be reasonably necessary to meet the goals of the program.

(2) During the 60-day public comment period--

(A) the Secretary shall conduct a public hearing in each State affected by the program; and

(B) the appropriate Council or State shall submit its comments and recommendations, if any, regarding the plan and regulations.

(3) Within 45 days after the close of the public comment period, the Secretary, in consultation with the appropriate Council or State, shall analyze the public comment received and publish in the Federal Register a final implementation plan for the program and regulations for its implementation. The Secretary may not adopt a final implementation plan involving industry fees or debt obligation unless an industry fee system has been approved by a referendum under this section.